United States Court of Appeals

for the Second Circuit

APPENDIX

75-4209

C. A. No. 71-4278
(W. K.; Three-Judge Court)

USCA-2nd Nos.
75-4209 and 76-4103

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 71-4278 (W.K.; Three-Judge Court)

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Plaintiff*,
v.
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, et al.,
Defendants.

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 75-4209 & 76-4103

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Petitioner*,
v.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION, *Respondents*.

**On Petition to Review Orders of the
Interstate Commerce Commission**

JOINT APPENDIX

UNITED STATES COURT
FILED
AUG 18 1976

PAGINATION AS IN ORIGINAL COPY

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REA's First Brief, Appendix B, 4a-6a

REA Exhibit 46—
Memorandum November 12, 1943, re meeting to discuss evidence of debt

REA's Second Brief, Appendix B, 4a-9a

REA Exhibit 64—
Letter May 1, 1959, Southern Railway to William B. Johnson
[Letterhead of Southern Railway inadvertently omitted.]

REA's Third Brief

Excerpt from 1954 SEOA, Appendix, 1a-8a
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United States District Court

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 71-4278 (W.K.; Three-Judge Court)

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Plaintiff*,

v.

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, et al.,
Defendants.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 75-4209 & 76-4103

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Petitioner*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION, *Respondents.*

JOINT APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,	:	
Plaintiff	:	
v.	:	Civil Action No. 71-4278 (W.K.; Three-Judge Court)
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, et al.,	:	
Defendants.	:	

PETITION

Petition to review and set aside and declare null and void Orders of the Interstate Commerce Commission in Finance Docket No. 20812.

1. REA Express, Inc. ("REA") was adjudged a bankrupt in the United States District Court for the Southern District of New York on November 6, 1975. Petitioner, C. Orvis Sowerwine, was appointed as REA's Trustee in Bankruptcy by Bankruptcy Judge John J. Galgay on November 7, 1975. On April 8, 1976, Petitioner was authorized and directed by Judge Galgay to file this Petition. A copy of his order is attached as Exhibit A and copies of the Commission's orders served on August 29, 1975, and February 24, 1976, are attached as Exhibits B & C, respectively.

2. The Bankruptcy Court has authorized Petitioner to prosecute this petition because a judicial determination of the validity of nearly twenty-seven million dollars worth of fourteen-year non-negotiable notes issued to its railroad owners by REA in 1959, is essential to the administration of the estate of the bankrupt and Petitioner believes that the Commission erred in approving that note issue.

3. Petitioner asserts, for the following reasons, that the Commission erred in rejecting Judge von Rinteln's conclusion that these notes were issued without consideration:

(a) The underlying debt which the notes replaced was created by self-dealing in securities without competitive bidding in violation of Section 10 of the Clayton Act, 15 U.S.C. 20.

(b) The Commission erred in holding that it had power to relieve the note-holders from the requirements of 15 U.S.C. 20 by action taken pursuant to 49 U.S.C. 5 or 49 U.S.C. 20a.

4. Petitioner asserts that the Commission erred in approving the notes under the standards of 49 U.S.C. 20a for the following reasons:

(a) The railroad note-holders erroneously represented to the Commission, and the Commission erroneously found, that the issuance of the notes would be consistent with protection of the public interest in express transportation.

(b) The Commission erred in 1975 in concluding that its 1959 Order was proper.

(c) The Commission erred in both 1959 and 1975 in failing to consider the adverse impact of the notes upon REA's ability to obtain the working capital needed for its survival, and to pay its creditors.

(d) The Commission erred in 1959 in failing to notice that this note issue threatened REA's solvency and erred in 1976 in failing to notice that this note issue had in fact directly and significantly contributed to REA's bankruptcy.

5. The relief prayed for by Petitioner is an Order from this Court setting aside the Commission's approval of the 1959 notes issued by REA to its railroad owners, declaring those notes null and void from the date of issuance, ordering the note-holders to pay into the Bankruptcy Court for the benefit of REA's creditors, with interest thereon, all payments collected on said notes from REA and to pay such other damages resulting from the illegal issuance of said notes, as this Court may deem just and proper.

Dated: New York, New York
April 8, 1976

C. Orvis Sowerwine, Trustee
By Robert L. Wright, Special Counsel

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Certificate of Service

The foregoing Petition was served upon all counsel of record by causing a true copy thereof to be mailed, postage prepaid, this 8th day of April, 1976, at the addresses listed below.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

In Re :

REA EXPRESS INC., f/k/a Railway Express Agency, Inc., :

Bankrupt. :

- x

75 B 253

ORDER AUTHORIZING PARTICIPATION BY TRUSTEE IN LITIGATION

At New York, New York, in the Southern District of New York on the 8th day of April, 1976.

Upon reading the annexed application of C. Orvis Sowerwine, Trustee, dated April , 1976, by Whitman & Ransom, Esqs, and Marcus & Angel, Esqs., his attorneys, and this Court having found that a judicial determination of the validity of approximately $27 Million of notes issued by the bankrupt in 1959 and interest thereon is necessary to the administration of the estate of the bankrupt, and sufficient cause appearing therefor, and no adverse interest being represented, it is

ORDERED, that the Trustee is authorized and directed to take appropriate action for the purpose of seeking to have reviewed, set aside and declared null and void orders by the Interstate Commerce Commission in Finance Docket No. 20812, with respect to the issuance of said notes, and having said notes judicially declared null and void, and having the note-holders ordered to repay all amounts paid with respect to said notes, with interest thereon, and such other damages as the Court may deem just and proper.

/s/ John J. Dooling
Bankruptcy Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x 75 B 253

In re :

REA EXPRESS, INC., f/k/a Railway Express Agency, Inc., :

Bankrupt. :

- x

APPLICATION FOR AN ORDER AUTHORIZING PARTICIPATION BY TRUSTEE IN LITIGATION

TO THE HONORABLE JOHN J. GALGAY, BANKRUPTCY JUDGE:

The application of C. Orvis Sowerwine, Trustee in Bankruptcy, by his attorneys, Whitman & Ransom, Esqs. and Marcus & Angel, Esqs., respectfully alleges:

1. On February 18, 1975, the above-named bankrupt filed a petition for an arrangement under Section 322 of Chapter XI of the Bankruptcy Act.

2. On February 18, 1975, this Court entered an order authorizing the Debtor-in-Possession to operate its business.

3. The Debtor-in-Possession was engaged in the business of surface and air express shipments throughout the United States under the regulatory jurisdiction of the Interstate Commerce Commission and the Civil Aeronautics Board. It was also engaged in the business of international transportation and custom brokerage.

4. On November 6, 1975, the above-named Debtor was adjudicated a bankrupt by order of this Court. On November 7, 1975, the applicant, C. Orvis Sowerwine, duly qualified as Trustee by filing his bond. The bond was approved by order dated November 7, 1975.

5. Robert L. Wright, Esq., at the request of this Court, and with the concurrence of the Trustee, has reviewed the pending litigation entitled REA Express, Inc. v. The Alabama Great Southern Railroad Company, et al., S.D.N.Y. 71 Civ. 4278, and Finance Docket No. 20812 of the Interstate Commerce Commission, with respect to the approximately 27 million dollars in notes issued by the bankrupt to its contolling railroads in 1959, and is of the view that said notes were issued in a manner which was illegal and fraudulent with respect to REA's other creditors. Accordingly, Mr. Wright recommended that the Trustee seek review of the Commission's approval of said note issue, through special counsel, using the firm of Wisehart, Friou & Koch as cooperating counsel to the extent and in the manner to be determined by said special counsel.

6. Mr. Wright recommended the employment of counsel other than himself for that purpose. However, after diligent inquiry, it was the view of the Trustee and co-counsel to the Trustee, Whitman & Ransom and Marcus & Angel, concurred in by Wisehart, Friou & Koch, previously special counsel to REA now bankrupt, and by Anderson, Russell, Kill & Olick, counsel to REA Debtor-in-Possession prior to its adjudication, that Mr. Wright be asked to accept this employment. Upon the request of the Trustee, Mr. Wright has consented to prosecute the Trustee's petition for review through a decision by the 3-judge Court and, by order of this Court dated April 6, 1976, the Trustee was authorized to retain Mr. Wright as special counsel. Mr. Wright was also authorized to retain the firm of Wisehart, Friou & Koch to assist him.

7. In the absence of any recovery in this and other

pending litigation, the total claims of all of REA's creditors, excluding the 1959 notes held by the railroads, may exceed the total amount available for distribution by more than 40 Million dollars. It therefore becomes necessary to determine the validity of the 1959 notes for the reason that if such notes are determined invalid, a claim may exist against the railroads, for interest paid on the certain notes. It appears to the Trustee at this time that such claims for interest would exceed the aggregate amount of claims that such railroads have filed against the bankrupt(other than the notes) for the period preceding the filing of the Chapter XI petition.

In addition, the Trustee has been operating the Rexco business. The Trustee has received indications from the Interstate Commerce Commission that this valuable asset may be sold by the Trustee upon an undertaking by the purchaser to continue to operate the express business at least in substantial part over a period of time. If the Trustee is successful in making such a sale then sufficient funds may be realized by the Trustee so that Chapter XI administration claims may be paid in full and a sufficient amount of cash left over to enable the Trustee to pay not only all priority claims of the bankrupt but a dividend on the general unsecured claims. In this eventuality, it would be necessary to determine the correct amount of the pre-petition claim of each of the railroads. This litigation being undertaken by Mr. Wright will result in such a determination at least with respect to those railroad claims arising out of the issuance of the notes.

WHEREFORE, the Trustee respectfully requests that the annexed order be signed.

Dated: New York, New York
April 8, 1976

C. ORVIS SOWERWINE, Trustee
By Whitman & Ransom and
Marcus & Angel, co-counsel

By _____
A Memeber of the Firm of
Whitman & Ransom

Served August 29, 1975

F-9711

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 20812

RAILWAY EXPRESS AGENCY, INC., NOTES

Decided July 28, 1975

On further consideration, held that issuance of notes to evidence funds advanced on open account, referred to as "non-negotiable debt," properly authorized in prior order (not printed), decided September 21, 1959, since non-negotiable debt was, in fact, debt.

John M. Cleary, Michael Lang, F. Douglas Rudd, and *Arthur M. Wisehart* for REA Express, Inc.

Charles B. Evans, S. William Livingston, Jr., Sidney Weinberg, and *Edwin M. Zimmerman* for certain railroads.

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION

BY THE COMMISSION:

This proceeding was reopened for further consideration by order of January 9, 1973, following the entry on December 20, 1972, of an order by the United States District Court, Southern District of New York, granting a motion made by this Commission to intervene and to stay further court proceedings in a civil action entitled *REA Express, Inc.* v. *The Alabama Great Southern Company,* et al., 71 Div. 4278. A central issue in the court action is the enforceability of certain notes issued by the Railway Express Agency, Inc. (REA), the predecessor of the plaintiff in the court action, following authorization by the Commission in this proceeding (Finance Docket No. 20812). By order of September 25, 1959, (Appendix A) the Commission, Division 4, acting pursuant to section 20a of the Interstate Commerce Act, authorized REA to issue nonnegotiable promissory notes to 66 of its controlling railroads in the amount of $27,637,053.80 (1959 notes). The 1959 notes were issued to "evidence *** open-account indebtedness" of REA to these railroads in the same amount. We have reopened this proceeding, and the court has agreed to stay its proceeding, in order that we may consider the question whether the 1959 notes were, in fact, issued for "debt," the bearing of that question on the correctness of our

1959 order, and the relationship of the 1959 order and earlier orders to certain claims made by REA under the antitrust laws.

SCOPE OF THE REOPENING

In order to understand the scope of this reopening, it is necessary to briefly describe the major events leading up to this stage in the proceeding. A more complete factual exposition is set forth below. In January 1929, substantially all the railroads in the United States entered into a joint venture to conduct the railway express business in this country. This was to be accomplished by purchasing all the assets of the sole express agency then operating, the American Railway Express Company, and transferring these assets to the newly-formed REA. The assets were to be purchased with funds raised through the public sale of $32 million of 5 percent REA bonds. All the capital stock REA was sold to 85 "participating railroads" for a total amount of $100,000. Operating agreements were executed between REA and all railroads using the express service. These agreement provided that REA would be the exclusive express agency of the railroad and that annual revenues of REA, after deduction of operating costs, would be distributed to the railroads executing operating agreements in proportion to their express business. On February 11, 1929, the Commission approved these transactions, specifically authorizing the pooling of earnings, the control of REA by the railroads, the sale of the bonds, and the distribution of the capital stock, pursuant to sections 5(1), 5(2) and 20a of the Interstate Commerce Act. *Securities and Acquisition of Control of Ry. Exp. Agency, Inc.*, 150 I.C.C. 423 (1929).

In its report, the Commission stated that it was not passing on all provisions of the operating agreement such as the provision for sinking funds to repay the bonds. The record in this proceeding is replete with evidence relating to two proposed methods of providing a sinking fund for repayment of the maturing REA bonds, the motivations of the railroads in adopting one of the methods and the knowledge of the Commission of a dispute about the sinking fund at the time of the February 11, 1929, report and order was issued. This evidence will be set forth below. At the first meeting of the permanent board of REA, on April 11, 1929, it was decided to meet the sinking fund obligation on the bonds by deducting from "rail transportation revenues" payable to the stockholding railroads by REA, $800 semiannually for each share of stock held, "such deductions to be credited to such stockholders as money advanced

to REA." These amounts were carried on REA's books from their inception as "non-negotiable debt to affiliated companies—Advances "(the Non-Negotiable Debt). Interest of 5.5 percent per annum was paid on the Non-Negotiable Debt.

By 1938, approximately $15,200,000 had been paid into the sinking fund, leaving $16,800,000 in 1929 bonds outstanding. $2,600,000 on the Non-Negotiable Debt had been repaid to railroads, so that the REA's books showed advances of $12,600,000 as of December 31, 1938. Because of the low interest rates prevailing in 1938, REA decided to call the outstanding bonds and issue a like amount of notes at a lower interest rate (the 1938 notes). The notes, like the bonds, would mature in semiannual installments of $800,000 and, again like the bonds, the funds for repayment would be advanced by the stockholding railroads and treated as additional Non-Negotiable Debt. The Commission, Division 4, approved the issuance notes in the principal amount of $16 million (the amount of 1929 bonds to be outstanding on March 31, 1939) pursuant to section 20a of the Act, on December 20, 1938, in in its report described the proposed repayment through advances. *Railway Exp. Agency, Inc. Notes,* 230 I.C.C. 478, 479-480 (1938).

In 1959, the railroads proposed a new operating agreement reducing the restrictions on REA's use of carriers other than rail lines and making other changes in hopes of improving REA's performance. This was motivated, in part, by increased out-of-pocket deficits sustained by the railroads for the services they provided REA, with this deficit reaching $40 million in 1958. In a report dated September 21, 1959, the Commission, Division 3, approved the new pooling agreement pursuant to section 5(1). *Express Contract, 1959,* 308 I.C.C. 545 (1959). Simultaneous with the revision of the operating agreement the railroads and REA decided to issue promissory notes to the railroads in exchange for the Non-Negotiable Debt, which then totaled $27,637,153.80. By order dated on September 25, 1959, the Commission, Division 4, authorized the issuance by REA of the 1959 notes to the railroads in an amount equal to the amount of advances to each railroad shown on REA's books. Approval noted, *Railway Express Agency, Inc., Notes,* 307 I.C.C. 812. F.D. No. 20812, Sep. 25, 1959

The earnings performance of REA did not improve and, in order to prepare for a sale of REA to outside interests, most of the shareholding railroads deposited their REA stock in a voting trust in 1968. In August 1969, five officers of a holding company, the REA Holding Corporation, which purchased virtually all the REA stock

held,by the railroads for approximately $2 million cash and warrants to purchase shares of the holding company. After the new owners took control of REA, interest payments on the 1959 notes continued to be made by REA u . i September 1971. On September 30, 1971, REA filed the civil action against the holders of the 1959 notes referred to at the beginning of this report, *REA Express, Inc.* v. *The Alabama Great Southern Railroad Company, et al.* (REA Lawsuit).

THE REA LAWSUIT

Sixty-one defendants are named in the REA Lawsuit, of which 56 are railroad corporations which currently hold the 1959 notes, two are railroad corporations which formerly held the 1959 notes, and three, including the United States, are named as assignees of such notes. REA seeks damages for alleged breaches of the antitrust laws, breaches of fiduciary relationship and violations of the Interstate Commerce Act. REA also seeks a declaratory judgment that the 1959 notes are void. Specifically, REA alleged that the railroad companies, during the period they were in voting control of REA, violated section 10 of the Clayton Act in creating the Non-Negotiable Debt in 1929, causing the partial repayment of Non-Negotiable Debt by REA between 1929 and 1938, creating additional Non-Negotiable Debt in connection with the 1938 notes, and repaying the outstanding Non-Negotiable Debt by means of the 1959 notes, all without competitive bidding, as allegedly required by the Clayton Act.

REA's claim under the Interstate Commerce Act relates to section 20a of the Act, which requires our authorization of the issuance of "securities" by carriers. REA contends that the system of advances and Non-Negotiable Debt involved the issuance of a "security" subject to section 20a and the failure to secure authorization of the issuance on the debt renders it void. REA further asserts that, since the Non-Negotiable Debt is void, the 1959 notes, which were issued as evidence of and in consideration for the Debt, are invalid and unenforceable. REA also charges that the 1959 notes were rendered invalid under general contract law by the termination of the 1959 operating agreement in 1968. The final claim by REA charges that the directors of REA, who were simultaneously directors of the railroads, breached their common law fiduciary duty by permitting or authorizing the acts described in the other claims. Damages of over $350 million are sought.

This Commission was not named as party defendant in the REA Lawsuit as originally filed. However, following the issuance of an opinion dated June 5, 1972, by District Judge Metzner on a motion to dismiss by the railroads, the Commission intervened and requested the court to defer further proceedings to permit reconsideration of our order authorizing the 1959 notes. This intervention was authorized by order of the Commission, dated August 10, 1972. The Office of the General Counsel had urged the Commission to intervene in July 1972, but the Commission then declined to intervene. Unlike the original complaint, REA's amended complaint directly attacked the validity of this 1959 order in an action in which the Commission had not been named as a party. In pursuance of ordinary procedure relative to challenges of our orders, the General Counsel for this and other reasons hereafter mentioned recommended that the Commission instruct it to intervene in the court action.

Judge Metzner's opinion, reported at 343 F. Supp. 851 (1972), is concerned with determining which claims of REA directly attack an order of this Commission, and, therefore, cannot be adjudged by him but must be heard by a three-judge court pursuant to the Urgent Deficiencies Act, 28 U.S.C. sec. 2321-2325. He ruled that the Commission had conferred antitrust immunity on the 1959 notes by specifically finding them necessary to carry out an activity authorized under section 5, the joint venture. He also noted that the Commission's order approving the issuance of the 1959 notes as evidence of the Non-Negotiable Debt expressly stated such issuance was for a lawful object necessary and appropriate for the performance of the carrier's services. Accordingly, he ruled that any claim that the issuance of the 1959 note violated section 10 of the Clayton Act or that the consideration for the 1959 notes (the Non-Negotiable Debt) was worthless "directly attack(s) a valid and subsisting ICC order—the order of September 25, 1959, approving the notes *** and must be brought before a three-judge court pursuant to the Urgent Deficiencies Act." 343 F. Supp. 851, 859. He dismissed the claim of REA based on issuance of the 1959 notes without competitive bidding and based on fact that the consideration for the notes was the Non-Negotiable Debt. Judge Metzner found no Commission order specifically approving the Non-Negotiable Debt. Therefore, REA's antitrust objections to the Non-Negotiable Debt could properly be heard in his court. Similarly, with respect to REA's claim that the 1959 note are unenforceable due to the premature termination of the 1959

operating agreement, the Judge found that no Commission order conditioned the validity of the notes on the continuance of the operating agreement, and denied the motion to dismiss on this issue.

Following the order of the Commission, dated August 10, 1972, a motion was filed in the REA Lawsuit to stay all proceedings "pending the Commission's reconsideration of its order of September 25, 1959," approving the 1959 notes. As was stated in a "Memorandum in Support of the Motion of the Interstate Commerce Commission to Defer further Proceedings Pending the Commission's Reconsideration of its Order," served on the parties to the REA lawsuit on September 5, 1972:

> The Commission desires the views of the parties on their basic assumption that the non-negotiable debt constitutes evidence of indebtedness. If the non-negotiable debt in fact represented but railroad equity in REA, then much of the present controversy may evaporate, and the 1959 notes perhaps were incorrectly approved.

It seems appropriate to point out at this juncture that our present task would be greatly simplified if we were to limit our reconsideration of this proceeding to the question whether the Non-Negotiable Debt was not "debt" and, therefore, constituted inadequate consideration for the issuance of the 1959 notes. After reviewing the record in this proceeding and related proceedings, we are convinced that the Non-Negotiable Debt was clearly a "debt" of REA from the time of its creation until its discharge by the issuance of the 1959 notes. Therefore, the 1959 notes were not "incorrectly approved" by us due to lack of consideration. We have found no great difficulty in concluding that something which the parties call "debt," and consistently treat as "debt," is, in fact, "debt," and the evidence and arguments supporting our conclusion are set forth below. However, the scope of this proceeding upon reopening was substantially broadened by developments immediately following out intervention in the REA lawsuit.

On September 4, 1972, REA served a Notice to Produce upon the Commission under Rule 34 of the Federal Rules of Civil Procedure. REA refers to this when it asserts in its brief, "Thus began REA's continually frustrated attempts to ascertain from both the railroads and the ICC the facts and circumstances of the Commission's decision to intervene in the antitrust suit and reopen a decision made thirteen years ago." REA also alleges in the brief that "The General Counsel's Office had become a railroad ally and formed a bias against REA's position in the lawsuit." It appears that REA did not fully appreciate the thrust of the "debt-equity" theory

propounded by the Office of the General Counsel, since adoption of this theory would relieve REA from responsibility for the 1959 notes. The formal proceedings resulting from the REA discovery efforts are discussed below under the heading "Commission Proceedings Since Reopening."

In addition to the proceedings arising from the REA allegations, our responsibilities in this matter were also extended beyond the "debt" question by subsequent proceedings before the District Court. Following a hearing on November 3, 1972, the Commission filed, on November 17, 1972, a "Further Memorandum" relating to its motion to stay the court proceedings pending reconsideration by the Commission. In this memorandum, the Commission broadened the area of our inquiry, presumably at the suggesion of the court. The "Further Memorandum" proposed that, "In the reopened 1959 proceeding the Commission can now decide whether it intended to grant retroactive antitrust immunity, a power it clearly has." It was also stated that, "The complaint before this Court presents for the Commission the questions, among others, (1) whether the notes were approved in furtherance of a section 5 transaction approved by the Commission, and, if so, (2) whether they were approved on the basis of all material facts properly brought to its attention."

On December 20, 1972, a three-judge District Court for the Southern District of New York granted the Commission's motion for a stay of the court proceedings. In a Memorandum and Order signed by Justices Friendly, Knapp and Griesa (see Appendix B to this report), the court states, "Our action on the Commission's motion is predicated on the assumption that it will enterain all the proposals outlined in its memoranda and, indeed, any other that may be appropriate." This statement follows a recitation by the court of four areas for reconsideration suggested by the Commission. The court quotes from the Commission's memorandum in stating that reconsideration will be given to (1) the suggestion that the Non-Negotiable Debt perhaps "in fact represented but railroad equity in REA," (2) whether "the 1959 order was correctly or appropriately issued" on the contrary assumption, (3) whether "the 1959 order, or indeed prior orders, did exempt the 1959 notes and the non-negotiable debt from the requirements of the antitrust laws" and, more specifically, (4) "whether the notes were approved in furtherance of a section 5 transaction approved by the Commission."

With respect to the Commission's suggestion concerning a retroactive grant of antitrust immunity, the court expressed some

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doubt as to the Commission's right to make such a grant. The court goes on to state, "However, we see no reason to pass on the Commission's powers until we know, as neither we nor it now can know, namely, what it desires to do." Since the Commission might decide to proceed with reconsideration even if the stay were denied, the court concluded, "Economy of administrative and judicial time will be furthered by allowing the Commission to engage now in whatever reconsideration, clarification, revision, or supplementation it considers to be proper and lawful." The court has thus given this Commission the widest latitude in determining the scope of this proceeding on reopening. However, in accordance with our own concern for the "economy of administrative and judicial time", we have attempted to limit our inquiry herein to those questions we raised with the court and with which the court expressed its concern in its Memorandum and Order of December 20, 1972.

The stay of the court proceedings was conditioned on the Commission's initiating proceedures for reconsideration by January 9, 1973. The stay was to expire on May 1, 1973, but has been extended by several orders of the court. On January 9, 1973, the Commission issued an order reopening the proceeding authorizing the issuance of the 1959 notes (see Appendix C hereto). REA and the railroads and their assignees listed in the appendix to the order were made parties to the reopened proceedings. The parties were ordered to file with the Commission copies of affidavits filed in the REA Lawsuit, briefs, verified statements of fact, and proposed findings and conclusions, addressing themselves to the substance of the following issues and the Commission's authority in the matter:

1. Did the non-negotiable debt represent the build-up of railroad equity in REA by its railroad parents?

2. Did REA's repayment of that debt or interest thereon represent a return of or on equity capital?

3. If the answer to numbers 1 or 2 is "yes", what legal or practical consequences should flow from that finding?

4. Did the 1959 order or prior orders exempt the 1959 notes or t[illegible] non-negotiable debt from the requirements of the antitrust laws?

5. Are there findings that should now be made by this Commission that would retroactively exempt the railroads from the requirements of the antitrust laws?"

COMMISSION PROCEEDINGS SINCE REOPENING

Our discussion of the issues set forth above and their background will follow a brief description of certain related proceedings before

the Commission commencing shortly after the January 9, 1973, order and terminating with the service of two Decisions and Orders of the Commission on June 20, 1974, and a third on August 20, 1974.

As previously mentioned, REA had expressed dissatisfaction with the role of the Commission's Office of General Counsel in this proceeding. This resulted in REA's filing a petition on March 1, 1973, alleging certain improperieties in the nature of *ex parte* communications between the Office of General Counsel and representatives of the railroads. REA asserted that these communications caused the reopening of this proceeding and Commission intervention in the District Court proceeding. REA requested that discovery before an independent Administrative Law Judge be granted respecting such alleged improprieties. On March 5, 1973, REA filed a second petition requesting pre-hearing discovery on the merits of this proceeding. On April 10, 1973, the matter was referred to an Administrative Law Judge for prehearing conference and discovery.

The discovery phase of this proceeding evolved into two separate inquiries conducted independently of each other. The larger of the two was termed "discovery on the merits" and involved discovery via interrogatories by and to REA and more than 40 railroads. The other inquiry concerned the alleged *ex parte* communications of the Office of the General Counsel and was called "discovery on improprieties".

Following preparing conferences on nine separate dates by two administrative law judges and the exchange of voluminous documentary material between the parties, the discovery on the merits was concluded by a Report and Order of Administrative Law Judge Nacy served April 30, 1974. REA had proposed continuing the prehearing inquiry with a "Second Wave of Discovery." In denying this request, Administrative Law Judge Nacy stated:

> The parties have had their fair opportunities to seek discovery. Indeed, the discovery procedures have extended so far as to mock the Commission's use of the expression, "on an expedited basis", in its order served April 10, 1973 (page 3, line 2). Everything of value in answering the Commission's five questions, likely to be discoverable, has surely been discovered. It is time to get on with modified procedure and decision.
>
> Many proposals for further discovery have been advanced by REA. They have had no relevance to Commission's limited inquiry. Whether or not they may be relevant to the litigation now pending elsewhere between REA and railroad parties would appear to be for the proper Courts to say. It should be enough, here, to observe that the Interstate Commerce Commission has statutory duties and powers. They do not

include acting as a reservoir in which parties should be free to fish for evidence intended for use elsewhere.

The order of April 30, 1974, denying all requests for further discovery and concluding the prehearing conference and discovery on the merits was adopted as an order of the Commission by a Decision and Order served August 20, 1974. This order also fixed the schedule for filing of briefs, verified statements, affidavits, and proposed findings and conclusions under the modified procedure. All parties were ordered to file their pleadings and supporting material within 50 days of service of the order, and their replies within 70 days of the order.

Following prehearing conferences, interrogatories directed to certain of the railroads and depositions of the Commission's General Counsel and an Associate General Counsel before an administrative law judge, the "discovery on improprieties" was concluded with the service on September 10, 1973, of a "Second Report and Order on Pre-Hearing Conference" by Administrative Law Judge von Rinteln. The Administrative Law Judge found no evidence that the recommendation of the Office of General Counsel respecting intervention in the REA lawsuit was motivated by an extraneous influence or for any improper reason; that the *ex parte* communications involving the Office of the General Counsel were proper; and that the Commission's claim of privilege as to certain intra-agency memoranda and attorney's working papers was properly asserted under the Administrative Procedure Act. The findings and conclusions in this Report and Order were affirmed by the Commission in an order served June 20, 1974. In this order, the Commission also denied a motion of REA to disqualify the Office of General Counsel, pointing out "That the Office of General Counsel has not and will not participate, in any manner, in the decisional process concerning the merits of this proceeding."

These discovery proceedings have resulted in an extended postponement of the court proceedings in this matter. However, the prime petitioner for discovery has been the plaintiff in those proceedings, REA. It is hoped that the accumulation of evidence in the record and our consideration of such evidence herein will make the task of the court somewhat easier when this proceeding is returned to it.

BACKGROUND

At the time of the passage of the Interstate Commerce Act in 1887, there were thirteen rail express companies operating in the

United States. These companies would take orders from shippers for the expedited transport of small freight packages, and perform any necessary pick up and delivery to and from a railroad, which was responsible for the actual movement of the goods. The shipper would make full payment to the express company, which would then reimburse the rail carrier for its portion of the service.

As part of the national mobilization for World War I, the railroads were put under Federal control in 1917. At that time, the railroad express business in the United States was carried on by seven companies, with the four largest (Adams, American, and Southern Express Companies, and Wells Fargo & Company) accounting for approximately 95 percent of the business. The Director General of Railroads refused to honor the contracts with the several express companies, insisting on contracting with a single entity as his express agent. Accordingly, the four largest companies acquired the businesses of the three others and exchanged the combined express properties (valued by the Director General at $30 million) together with $3 million in cash for stock in the newly formed American Railway Express Company. In 1918, the new express company contracted with the Director General as sole agent to conduct express operations.

Federal control of railroads was ended by the Transportation Act of 1920, which statute also contained a specific grant of authority to this Commission to approve the merger of the four predecessor express companies into American Railway Express Company. Formal approval by the Commission was given in a report of the entire Commission, decided December 7, 1920, *Consolidation of Express Cos.*, 59 I.C.C. 459, which contains most of the background set forth above. On the same date, the Commission also approved the pooling provisions under Section 5(1) of a new operating agreement between the express company and the railroads, *Express Contract, 1920,* 59 I.C.C. 518 (1920). The agreement provided for the division of the railroads into three geographical regions, with revenue computed by region. Expenses applicable to each region where then deducted to reach "Income for Division". Two and one-half percent of this amount was taken as profit by the express company and the remainder distributed to the railroads in each group under a formula based upon the amount of express business handled by each railroad. American Express Railway Company operated under this agreement, with minor modifications, from 1920 until 1929. One modification required that each railroad purchase

all express company property located on its line at cost less depreciation if the express company did not continue express operations after February 28, 1929, the termination date of the operating agreement.

THE FORMATION OF REA

Certain weaknesses in the post-World War I arrangements for express business appeared early in the 1920's. The railroads found themselves losing substantial sums from their express business. With its fixed percentage of revenues guaranteed, American Railway Express Company was making an adequate return on its investment. The express company's financial condition did not justify an increase in rates, and the railroads found it difficult to convince the Commission that their losses constituted legal justification for an increase. As Commissioner Eastman stated in a separate expression in a proceeding decided May 17, 1924:

> So favorable did the contract prove that in the second year of its operation the express company made a voluntary additional payment of $1,700,000 to the railroads in order that its profits might not substantially exceed 8 per cent. Later the contract was amended, so that there might be less opportunity for excessive profits; but it still remains true that the express company is virtually insured a reasonable return and that the risk of the business is upon the rail lines. The result is that in the instant proceeding we have a carrier seeking an increase in rates, not for its own benefit, for it concedes that it need no increase, but in order that other carriers which are in its pay may not suffer financially from a contract into which they voluntarily entered. Obviously, the situation is anomalous and fraught with danger so long as the express company remains an ostensibly independent corporation. For their own protection it would seem that the *Express Rates, 1922*, 89 I.C.C. 297, 319 (1924).

The railroads began investigating the possibility of purchasing the express business and operating it on a nonprofit basis as a railroad-owned joint venture with nominal capital stock. On June 21, 1928, a committee of the Association of Railway Executives, the "Uniform Express Contract Committee", which represented the railroads having contracts with American Railway Express Company, adopted a "Report and Plan for Future Conduct of Express Business", The Plan stated that the

> *** object sought to be obtained by the Plan is to make the future express agency a railroad-owned joint facility engaging in express transportation in its own name, but nevertheless acting in fact as the agent of its railroad principals and accounting to them under the terms of the operating agreement *** for all of its revenues after payment of expenses. This relationship will make the railroads transporters of express as they are of freight with a consequent like status before commissions and courts.

The 1928 plan contemplated the formation of a new express company, to be called "Railway Express Agency, Inc." (REA). The company's capital stock would consist of 1,000 shares to be sold at $100 per share to 86 "participating railroads", These railroads, which handled 98 percent of the express business in the United States, were allocated the stock under a formula reflecting each road's percentage of the gross express business which it handled in prior years. The 300 short line railroads, which in the aggregate accounted for only 2 percent of the express business, would not be shareholders of REA, apparently to avoid such problems as fractional shares, but would become signatories to the uniform operating contracts and participate in express revenues.

The new REA common stock could not be sold without offering it first to REA at the original price and, if REA declined the offer, could only be sold to other railroad corporations. The earnings from the express business were not to be distributed on the basis of stock ownership but in accordance with the operating contract. The $100,000 capital stock was not to represent any substantial equity in REA's properties (with a book value of approximately $30 million) but to represent merely the voting rights. It was proposed that REA's board of directors consist of 15 members, with 6 to be nominated by the eastern roads, 5 by the western roads, 3 by the southern roads and one "director-at-large".

Part of the 1928 plan was a proposed standard express operations agreement (SEOA) to be entered into between each railroad and REA. the SEOA set forth the terms and conditions governing the railroads' conduct of the express business and made REA the "exclusive agent" for all express business conducted over each contracting railroad's lines.

Of particular importance to this proceeding are the provisions for distribution of express revenues contained in Article V of the SEOA. The railroads were divided into four groups: eastern, southern, western, and mountain-Pacific. All revenue collected by REA on less-than-carload shipments, 15 percent of the carload revenue and any other revenues were to be so determined for each group. Eighty-five percent of the carload revenue went to the individual railroad for shipments over its lines. However, carload shipment consistently amounted to less than 3 percent of revenues. Thus, the bulk of the revenues were calculated on a regional group basis. Operating expenses and other expense items were similarly ascertained separately for each regional group, and items and

charges that were common to more than one group were apportioned among the groups. All these expenses, items and charges were then deducted from the group's revenues, and the remaining amount was called "rail transportation revenue". Among the items that would be deducted were certain "profit and loss debits", including an account under Section 4(j) of Article V of the SOEA for "Surplus Applied to Sinking and Other Reserve Funds". The entire amount of "rail transportation revenue" was required to be paid out monthly by REA to all the railroads contracting with REA pursuant to a formula reflecting the amount of express business done by each railroad. The plan stipulated that REA would realize no operating profit, stating "the express operating agency shall realize no net income for distribution as dividends".

The 1928 plan proposed two alternative methods for purchasing the business of American Railway Express Company: (1) the purchase of all the stock of the express company from the various stockholders, or (2) the creation of a new company which would purchase the assets of the express company. Since the plan contemplated that the express agency would be run on a nonprofit basis, the first alternative was to be adopted only if all the stock of American Railway Express Company could be acquired. Negotiations with the holders of the express company stock were unsuccessful and the second alternative was adopted. Under the plan, the cash required for purchasing the assets of the express business and for initial working capital would be raised by issuing bonds, debentures, or notes of REA. These would be either be purchased by the stockholding railroads on a proportionate basis or sold to the public by REA.

The 1928 plan provided it would go into affect when railroads comprising 75 percent of the current express business had executed an "Agreement with Agents", a copy of which was attached to the plan and proposed SOEA forwarded to the railroads in the summer of 1928. The Agreement with Agents appointed four individuals as agents of the railroads an authorized them to incorporate REA and take other steps necessary to implement the plan.

While these authorizations to proceed were being collected by the Committee, a problem arose which eventually led to the creation of the Non-Negotiable Debt, a major subject of our concern herein. As stated above, in the computation of "rail transportation revenue" to be distributed to the railroads, one of the items to be deducted as an expense was "Surplus Applied to Sinking and Other Reserve Funds".

The natural assumption from the existence of this account is that the current distributable rail transportation revenues, which were to be based on express business conducted, would be reduced in an amount sufficient to satisfy any sinking fund established to repay debt incurred to purchase the express company assets. This arrangement was challenged by William H. Williams, Chairman of the Boards of the Wabash Railway Company and the Denver and Rio Grande Western Railroad Company.

Mr. Williams met with members of the Legal Committee of the Uniform Express Contract Committee on October 8, 1928, to discuss several objections he had to the 1928 plan. He described the discussion on a sinking fund in a letter dated October 20, 1928:

> If the company were to be financed in the first instance through an issue of bonds to be taken by the railroads, the latter would be entitled to interest on the outstanding bonds. If, however, these bonds be sold to outside parties, it is expected that the bonds will be retired during the life of the contract with the railroads through the operation of a sinking fund so that, in this way, there would be deducted from revenues properly belonging to the railroads an amount sufficient to retire the bonds. I asked them as to how the property would be divided in the event of dissolution, and they stated on a stock basis. I pointed out, however, that the bonds would be bought by the railroads on the basis that the express earnings of each railroad bear to the aggregate express revenues of all the railroads and, inasmuch as the railroads would be paying over 99% of the cost through the operation of the sinking fund, that the distribution should be on the basis of contributions to the sinking fund and not on the basis of stock ownership. I believe I convinced them of the equity of such distribution.

The same point was made more graphically by the President of the Wabash Railway Company in a letter of the December 20, 1928, to the Chairman of the Uniform Express Contract Committee describing a conference Mr. Williams had with the railroads' Law Committee:

> In the event of dissolution, instead of distributing the assets on a basis of stock ownership, the assets of the corporation should be distributed on the basis of cash contributed by each carrier in the purchase of capital stock of the new Express Company and in payments into the sinking fund of such Express Company.
>
> All conceded it would be inequitable to distribute the assets on the basis of purchase of some $80,000 or $90,000, of capital stock, whereas the actual payments by the respective railroads would be on the basis of earnings after the contract became effective and for an amount well in excess of $35,000,000. (The purchase price of the stock was actually $100,000.)

To fully understand the Williams objection, it must be remembered that the railroads were being asked to enter into an entirely new and untried business arrangement of some magnitude. It is to be

expected of prudent businessmen that they would be concerned with the financial consequences of the dissolution or sale of the proposed REA, or the withdrawal of participating railroads. The stockholding railroads conducted approximately 98 percent of the pre-1929 express business. If the sinking fund payments were to be deducted before rail transportation revenues *and* the stockholding roads continued to conduct 98 percent of the express business, then they would be contributing 98 percent of the cost of *REA as a group* and ending up holding 100 percent of the ownership. This is not an unreasonable result, considering the problems involved in assigning proprietary interests to the short lines, discussed below. However, *within* the group of stockholding railroads, inequities would arise. As an example, the shares of stock alloted to certain railroads, based on their "percentage of gross express business done by the Railroads in the past" were, as to Mr. Williams' roads, Wabash-12 shares (1.229%) and Denver and Rio Grande-5 shares (.545%), with The New York Central Railroad Company receiving 144 shares for prior express business percentage of 14.426 and The Pennsylvania Railroad Company-126 shares (12.608%). Since there could be substantial variances in the future express business done by the 86 stockholding railroads and there clearly would be some changes in their relative contributions to the total express business transacted, Mr. Williams felt this should be reflected in any distribution of REA's assets.

The Williams objection was the prime impetus for the subsequent decision not to utilize the sinking fund deductions from rail transportation revenue in Section 4(j) of Article V of the SEOA and replenishing of the sinking fund through assessments on stockholders after computation of rail transportation revenues, which were carried as "advances" on REA's books. Other justifications for the treatment finally adopted became evident to the railroads, but were not all articulated until somewhat later. The method adopted avoided the inequity of having the nonstockholding short line roads making contributions to the capital of REA without any corresponding credit. In soliciting their signatures to the SEOA, the short lines were assured in December 1928 that "the burden of financing the acquisition of the express properties would fall solely upon the participating (stockholding) railroads." Furthermore, with over 300 of these lines, the bookkeeping problems of assigning them some proprietary interest would have been substantial. Since REA would have been taxed on any amount deducted before reaching rail transportation revenues for sinking fund purposes, REA was enabled

to escape any income tax liability. Finally, the Commission itself, in its report approving the 1929 SEOA, questioned the distortion of rail transportation revenues caused by the prior deduction of sinking fund payments.

As stated above, the foregoing justifications for the sinking fund arrangement finally adopted had not been articulated in late 1928. In fact, the arrangement itself had hardly been conceived. The railroads' Uniform Express Contract Committee was soliciting acceptances to the plan, which included the SEOA. The Wabash had returned an executed SEOA which was accompanied by a letter making its acceptance conditional on the adoption of certain changes, including the Williams objection referred to above. The Chairman of the Committee, W. D. Storey, in a letter to the President of the Wabash dated December 3, 1928, protested that all the railroads must sign the same agreement and returned the executed SEOA. He went on to say, however:

*** all the members of the (Legal) Committee are of the opinion that the provisions of Exhibit D (Operating Agreement) would not preclude the Board of Directors of the Railway Express Agency, Incorporated, from providing as between the participating railroads for proprietary interests by them in a sinking fund set up to protect a bond issue corresponding to their respective contributions thereto, and the Legal Committee has recommended that such action be so taken. In this respect it is the opinion of the Committee that while the Agents would have authority in agreeing upon terms for financing the acquisition of the express properties to provide for a sinking fund to protect a bond issue, the Board of Directors of the Railway Express Agency, Incorporated, must determine how such fund shall be raised.

Mr. Williams and the principals of certain other railroads who had objected on the same grounds were persuaded to participate without changing the SEOA. As Mr. Storey described the situation in a January 1929 hearing before the Commission:

They (the Williams roads) made the further point that any contributions to a sinking fund should result in a corresponding proportionate interest in the property in the event of liquidation. The Legal Committee gave its opinion *** that the sinking fund contention was sound and could be put in effect without any amendment of the plan or its incidental papers, and the Legal Committee recommended that it be made effective by the board of directors in any sinking fund action. On the understanding that this opinion of the Legal Committee would be circulated among the Participating Railroads and submitted to the Commission at this hearing, this group of railroads has assented to the plan or agreed to do so.

The 1929 Orders and the Creation of the Non-Negotiable Debt

Having received executed agreements from railroads representing 75 percent of the express business, and having reached agreement

with American Railway Express Company and its principal stockholders on the basic terms for purchasing the properties of the express company, the plan for establishing REA was submitted to the Commission. Two applications were filed December 17, 1928, and December 20, 1928. A decision had not yet been reached as to the desired method of accounting for the sinking fund and the relation of the sinking fund to the computation of rail transportation revenue, nor had it been resolved whether the funds for purchase of the express property would be raised from the public or the railroads.

In Finance Docket No. 7322, application was made under section 5(2) of the Act for the participating railroads to control REA by acquiring its capital stock, and under section 20a to issue 1,000 shares of capital stock and to issue not exceeding $35 million of 5 percent bonds. An application was also made under section 20a(12) for officers and directors of the stockholding railroads to hold positions as officers and directors of REA. This application was later withdrawn as separate applications were filed by the persons asking for authority to serve as interlocking officers and directors.

In the application for authority to issue the bonds, it was stated that the proceeds from the bonds would be used to acquire the express business and for working capital. The application states that the bonds would be sold either to the public or to the participating railroads and that the terms of the bonds had not yet been finally negotiated. It was also stated in the application that it was "not feasible at this date" to give details concerning the bonds, but stated that the form of indenture would be filed as soon as practicable.

Approval of the pooling provisions of the SEOA under section 5(1) of the Act was sought in an application filed in Finance Docket No. 7316. In that application, it was emphasized that the new operating agreement differed substantially from the 1920 contract in that the express company's profit was now to be eliminated. REA was characterized as a "railroad-owned joint facility" which would operate as the "agent" of the railroads "without compensation or profit to itself."

On January 24, 1929, a hearing was held on the two applications before Director of Finance C. D. Mahaffie. Also present was Commissioner Campbell, who is named as the author of the Commission report on these applications. Mr. Storey testified that it had been determined that the bonds would be sold to the public rather than to the participating railroads. Pursuant to an understanding with the Williams roads, testimony was given as to the

Williams objections. As stated above, Mr. Storey testified that the Williams contention that "any contributions to a sinking fund should result in a corresponding proportionate interest in the property in the event of liquidation" was sound and that it could be put in effect by the new Board of Directors of REA without any amendment of the plan or the SEOA. Mr. Storey's letter of December 3, 1928, quoted above, was submitted and received as an exhibit to the record as the "opinion of the Legal Committee." Mr. Storey als testified that approval would be sought for the service by executi officers of the participating railroads on the board of directors of REA or as its officers.

Testimony was also given at the hearing describing the use of the sinking fund account under Article V(4)(j) of the new SEOA for repayment of the bonds. Charles A. Lutz, a vice-president of the express company in charge of accounts, listed certain accounts which were not in the earlier operating agreement, including "409-Surplus Applied to Sinking Fund and other Reserve Funds." According to the transcript, he then stated, "The American Railway Express Company did not use these accounts. If used by the Railway Express Agency, the accounts charged thereto will be deductions before arriving at Rail Transportation Revenue" Mr. Lutz also testified:

> It is not contemplated that the new Express Company will have any substantial amount of taxable net income, unless there shall be charges for income or surplus applied to sinking and other reserve funds included in deductions (i) or (j) in arriving at the balance to be distributed as 'Rail Transportation Revenue.' In this event it is understood that the amounts of such appropriations are not allowable deductions in the Express Company's return for Federal Income Taxes. Consequently, in the contingency and to the extent of such appropriations for sinking and other funds, the company will show net income subject to Federal Income Tax and such taxes when accrued will form a part of the deduction under Item (h) for express taxes.

It may be noted at this point that, in the instant proceeding, REA lays great stress on Mr. Lutz's testimony as a representation to the Commission that deductions for repayment of the bonds would be made before computing rail transportation revenues. The railroads contend, with equal ardor, that Mr. Lutz's testimony was replete with conditional phrases and that the Commission was fully aware that a different arrangement was being contemplated.

On February 11, 1929, the Commission approved the applications. *Securities and Acquisition of Control of Ry. Exp. Agency,* 150 I.C.C. 423. Approval was given to the railroads' control of REA under section 5(2), the issuance of the bonds and REA's capital

stock under section 20a, and the operating agreement under section 5(1) "solely in so far as it provides for a division of earnings" on a pooled basis. It was noted in the report that the application for interlocking directors had been withdrawn, "inasmuch as separate applications were being filed by the persons asking authority to serve as interlocking directors." (By an order dated February 8, 1929, after finding that "neither public nor private interests will be adversely affected," the Commission granted authority under section 20a (12) for 13 named individuals to hold positions as directors and/or officers of REA, in addition to their other offices with other carriers.)

In discussing the approval under section 5(2), the report characterizes the objective of the plan as being, "to provide for the future conduct of the express business through a separate agency, but in effect a joint facility of the railroads controlled by them through stock ownership." 150 I.C.C. 423, 426. The report also stated:

> Furthermore, the earnings of the Express Agency will not be distributed to the stockholders as dividends in proportion to their stock holdings, but the net revenues will be paid over to the participating railroads upon the basis of gross revenue for each company as will be hereinafter described. 150 I.C.C. 423, 430.

The report noted that the bonds would not be secured by a lien on physical property but by an assignment to the indenture trustee of REA's rights under the operating agreements. In discussing the ability of REA to repay the proposed borrowings, the report sets forth the gross charges of the express company for the years 1925 to 1928, estimates the net receipts that would have been available to pay the principal and interest on the proposed bonds, and concludes, "From these comparisons it appears that it may reasonably be expected that the Express Agency will earn many times over the yearly interest and principal requirements of the bonds, and will have substantial earnings for distribution to the railroads entitled thereto." 150 I.C.C. 423, 433.

From the foregoing, it appears that the Commission was not expecting the bond-holders to look to the assets of the express company as security for repayment. However, the last quotation was immediately followed by, "It should also be observed that at the end of 20 years the proposed $32 million of bonds will have been retired, leaving the Express Agency without any funded debt ***." In view of the funded debt which was created through the decision not to use the Article V(4)(j) account, REA naturally places great

emphasis on this statement in the present proceeding. The railroads maintain that there is no indication that the Commission placed any particular emphasis on this observation, or in any way relied upon it.

The railroads place *their* emphasis on the indications in the report that the Commission was not ruling on any specific method of handling the sinking fund, but leaving the matter to be finally settled by the applicants. The report refers to the provision for deductions from revenues for sinking funds in Article V(4)(j) and notes that:

> The effect of this will be to reduce operating revenues of the railroad carriers which they derive from express traffic by amounts which are in reality appropriations of surplus. *It should be understood that all that we are here passing upon is the plan for pooling and dividing earnings and we are not passing upon other provisions of the contract, such as that mentioned above.* Nothing herein contained is to be construed as an expression of opinion upon the propriety of such deductions in connection with the determination of recapturable income under section 15a of the Interstate Commerce Act. 150 I.C.C. 423, 434 [emphasis added].

The last sentence may be regarded as a criticism of this provision as resulting in a possibly improper reduction of reported income for purposes of the since-repealed recapture provisions of section 15a.

A final source of contention in this report is the statement that,

> "so long as any of the bonds are outstanding (REA) will, before making any payments to the participating railroads of any sums due to them under the operating agreements, set aside out of the net receipts for each six months' period ended June 30 and December 30, as a sinking fund, an amount equal to the principal amount of bonds which are due and payable in such six months' period." 150 I.C.C. 423, 432.

REA maintains that this statement required the deduction of sinking fund payments before calculating "rail transportation revenues." The railroads insist that the Commission attributed no particular significance to the provision in question, and, in any event, the procedure actually adopted conforms to the quotation, i.e., cash for the sinking fund was set aside before any payments were made to the participating railroads.

While a proof indenture dated January 28, 1929, had been filed with the Commission, the indenture for the bonds was not in final form on the date of the Commission's decision, February 11, 1929. The order referred to "an indenture to be made by (REA) under date of March 1, 1929," and ordered that, "within 10 days after the execution of said trust indenture, the Railway Express Agency, Incorporated, shall file a certified copy thereof with this Commission." 150 I.C.C. 423, 441-2.

Counsel for the railroads, the banks, and the trustees had been meeting on various occasions in January and February, 1929 to discuss revisions of the indenture, including changes to meet the objections of the Williams roads to the use of the SEOA's surplus accounts for retirement of bonds and consequent failure to provide an interest in REA proportionate to the continuing contributions by the railroads. The minutes of these meetings and memoranda of the lawyers involved are part of record in this proceeding.

A memorandum dated January 17, 1929, proposed the resolution of the Williams problem by inserting in the indenture a provision "that the sinking fund be charged to the Participating Railroads in the proportion of their stockholdings." This change was not made because, according to "Minutes of Counsel" dated January 28, 1929, "It seemed to us that it was dangerous to embody this in the indenture as full discussion of the matter later may develop some different method of handling the matter which will square with W. H. Williams' views." Similarly, a proposal to include a sentence explicitly permitting sinking fund deductions to be treated as advances was not adopted at a meeting of counsel on February 11, 1929, because "it implied that without this express provision the deductions could not be treated as advances and further as typing us up to this treatment which may not be the one finally desired." Accordingly, no specific provision was inserted in the indenture referring to a proportionate contribution by the railroad to the sinking fund or to an off-setting entry on REA's books, such as "advances." This was done in reliance on the legal opinions, discussed above, that the treatment of the sinking fund could be determined by the independent action of REA's Board of Directors.

One change in the sinking fund provisions contained in the January 28, 1929, proof of indenture submitted to the Commission was made, which appeared in the final version of the indenture filed on March 5, 1929. The proof of indenture provided, in Section 11 of Article IV, that, as long as the bonds were outstanding, REA will, "before making payment to any of the Participating Railroads of any sums due the railroads under the Operating Agreements," set aside out of its net receipts for each 6 months period the appropriate amount for the sinking funds. (This is presumably the clause referred to in the Commission report quoted above.) After objections on the grounds that this suggested that possibility that the sinking fund payments for a 6-month period were to be set aside out of the first month's distribution to the railroads, the quoted phrase was omitted in the final version of the indenture. At the

same time, "net receipts" was defined to mean "rail transportation revenues," without any deduction for sinking fund payments. The railroads state that that the original version was inserted for the protection of the bondholders to require that payments be made to the sinking fund before the railroads received anything. They are correct in saying that the final version preserved this priority, *i.e.*, in the terms of cash distribution of express revenues, the sinking fund payment would first be made before distribution to the railroads.

A proposed resolution of the sinking fund questions was discussed at a meeting of the Board of Directrs of REA held on February 28, 1929, but action was deferred until the REA stockholders had elected the permanent board of directors. The minutes of the meeting of the REA board of directors on April 11, 1929, state that the chairman reported that certain railroads had objected to the railroad companies contributing to the sinking fund contributions." The chairman added that the Legal Committee "had ruled that such provision could be made under the Plan." the board then adopted a resolution providing that "there be deducted from the share of Rail Transportation Revenue payable to each stockholder in the months of February and August in each yaer $800 per share of the capital stock of this Company held by such stockholders respectively, such deductions to be credited to such stockholders as money advanced to this Company." The resolution further provided that the advances would be used to pay the principal on the bonds and the REA would credit or pay interest on the advances at 5 1/4 percent per year.

On June 18, 1929, REA's vice president of accounting Charles Lutz, sent a letter to the chief accounting officers of REA's stockholders, enclosing a copy of the board's resolution of April 11, 1929, and stating that the amounts deducted pursuant to the resolution would be entered on REA's books "to the credit of your company in an account styled 'Non-negotiable debt to affiliated companies—Advances' and will bear interest at the rate of 5 1/4 per annum * * *."

In such manner was the Non-Negotiable Debt created. From a distance of 45 years, it is not difficult to attribute to its creation motives which may be devious or laudable, depending on one's vantage point. It may be helpful to quote some reasonably contemporaneous descriptions of the rationale for the adoption of the "Non-Negotiable Debt-advance" method of retiring the bonds. These comments were made in connection with the determination

by the REA board of directors in 1930 to adopt the same method in raising working capital for REA as well as funds for additions and betterments, i.e., by borrowing from each stockholder through advances to be deducted from the railroads' share of rail transportation revenue. While they are of some length, they do afford insight into the thinking of the parties involved at that time, as well as summarizing the mechanics and the effect of the choice.

A "Memorandum for Mr. Charske" (sometime head of the REA Finance Committe) dated January 27, 1930, from a member of the Legal Committee, H. W. Clark of the Union Pacific Railway Company, discussed the power of REA to raise money for working capital by appropriating funds before determining the amount of "rail transportation revenue" distributable to the railroads. The memorandum refers to the provision in the SEOA for the account entitled "surplus applied to sinking and other reserve funds," but recommends that REA not:

> *** exercise this right of deduction in the case of appropriations for capital purposes. Since it was finally decided not to require the short lines to bear any part of the cost of the acquisition of the American Railway Express Company properties, it would be inconsistent to make them share in future capital items. It is illogical to require contribution from the short lines through income deductions for which they would not receive in return any interest in the surplus. This latter objection could, to be sure, be obviated by giving the short lines notes or an open account credit for the amount of such deductions, but the large number of accounts involved in that arrangement would make it amount to an intolerable nuisance There would be some inconsistency also, as to the stockholding railroads, in making such deductions from income, in the proportion of the express business done by them, while their interest in the resulting surplus would be in the proportion of their stockholdings. This last objection of inconsistency was raised by Mr. W. H. Williams after the Express Plan had been adopted by the requisite number of roads and had been declared effective. He urged that in the event of sinking fund applications of income, there should be secured to the contributing carriers a proprietary interest in such sinking fund proportionate to their respective contributions thereto. The Law Committee ruled that this could be accomplished under the Plan without amendment and recommended that such action be taken by the board of directors when constituted. The assent of Mr. Williams to the Plan was induced bt this ruling and recommendation. The board of directors of the agency subsequently took action providing for the payment of bond maturities which, while not in just the form suggested by Mr. Williams, observed the principle of his criticism. The same reasons dictate the observance of property and other appropirations for capital purposes.

At the REA board meeting of January 28, 1930, the Finance Committee recomended that working capital be raised by borrowing through advances from stockholding railroads. The board approved the recommendation. The minutes show the following explanation by the Finance Committee:

We are not unmindful of the provision under item (j) of Section 4, ARTICLE V, of the Operating Agreement for the setting aside of surplus for investment in physical property but it is our opinion that the Board should not act under this provision, because (1) it would take from nonstockholding railroads money for investment in property in which they would have no proportionate to the amounts thus charged to them; and (3) there would be no interest charge in the operations of the Agency on the cost of the property.

The president of the Chicago, Indianapolis & Louisville Railway. objected to being required to make advances to enable REA to acquire property and contended that REA must use the surplus accounts in ARTICLE V(4)(j) of the SEOA. Mr. Lutz of REA replied by letter of March 5, 1930, and stated that the use of the surplus accounts was "voluntary on the part of the Agency, and the Board has decided in this case and in the case of the funds required to retire Maturing Bonds not to use them." The letter recited the Finance Comittee's explanation which is quoted above and went on to state:

In addition to the reasons assigned by the Committe there is the further objection to the use of these accounts that such a situation would present the anomaly of contributions to the capital of the Agency by the contract rail lines out of revenues and a progressive increase in the equity of the stock of the Agency held by the "participating railroads" without the reflection in their asset accounts of the cost or value of such increase. This objection was voiced by Commissioner Campbell in the hearing and conference in Washington in January, 1929 when the approval of the Operating Agreement and f the proposed issue of bonds was under consideration in Finance Docket Nos. 7316 and 7322.

It would appear that the payment of interest to carriers upon the advances made would really place these investments in about the same category as contributions to the capital of a joint facility, such as a union station, by proprietary rail roads. In other words, the capital provided through the advances yields 6 percent interest to the creditor, and such interest when charged into the income statement by the debtor is borne by the users of the property in the proportions of the use made by them, respectively. In these circumstances, the interest rate being fair, it would not make a great deal of difference how the amounts of the capital obtained is distributed among the interested railroads.

ACCOUNTING AND TAX TREATMENT BY REA AND RAILROADS

In its first annual report to the Commission for the year ending December 31, 1929, and in all later annual reports, REA reported its obligation on the advances as "non-negotiable debt" and part of its total debt, along with the bonds issued in 1929. Included in these reports was information as to the amount of advances made by each stockholder, the interest rate, and the interest paid by REA on the advances. In their annual reports to the Commission and other

reports, the railroads consistently treated the Non-Negotiable Debt as debt (and not equity). Most of the railroads placed the advances in an account for "Investment in Affiliated Companies-Advances." The interest received by the railroads from REA was generally recorded in the Commission account for "Interest Income."

For tax purposes, REA charged interest payments on the advances as an expense. The railroads took into income for tax purposes the full amount of rail transportation revenue owed to them by REA prior to any deduction by REA for advances. Similarly, REA treated as an expense for tax purposes the full amount of rail transportation revenue owing to the railroads prior to the advances.

This uniform treatment by REA and the railroads of the Non-Negotiable Debt as debt, and no equity, is also illustrated by certain transactions during the 1930's. In 1935, REA repaid the railroads $388,097 in advances representing the amount charged off as discount on the bonds. In 1936, REA found that it had "on hand more cash than needed in its present operations" and repaid $2.4 million in advances on the basis of $2,400 per share. In 1938, Southern Railway and its affiliated lines sold their express company to REA and became REA stockholders. REA purchased 24 shares of stock from its shareholders for sale to Southern and, according to REA board minutes, "reimbursed" the holders from which the stock was purchased for the advances made by them aggregating $255,407.37.

While the advances were entered on REA's books as debt, according to a letter of Mr. Lutz, dated March 24, 1931:

> No notes, receipts or other forms or evidences of indebtedness were issued for those advances, because to issue notes would have necessitated the approval of the Interstate Commerce Commission. It was assumed that the advices given by this office to the several railroads on Form 7102-A, a copy of which is enclosed would be sufficient to evidence the indebtedness.

The "advice" referred to Mr. Lutz was a form entitled "Advance Advice of Express Privileges" which showed an estimated amount due the railroad under SEOA for its express business during the prior month, deduction as "an advance by stockholders toward retirement of the bonds," and a "Net Amount payable." A check for this last amount would be forwarded within the current month, and the railroad would be advised of the actual amount due to it when the figures became available. The advice was signed by Mr. Lutz.

THE 1938 NOTES

With interest rates reaching new lows in the Depression, REA decided in 1938 to retire the remaining $16 million of 1929 bonds through the issuance of new notes. A 10-year note issue of $16 million was planned, under an indenture with Guaranty Trust Company of New York, with the interest rate to increase gradually from 0.375 percent in 1938 to 2.5 percent in 1948. As in the case of the 1929 bonds, the notes were to be secured by a pledge of REA's rights under the SEOA. REA would retire the notes in the same manner as the 1929 bonds, by taking advances from stockholding railroads. In contrast to 1929, the indenture for the 1938 notes expressly provided that the principal was to be paid by advances from stockholders. The terms for making the advances were set forth in identical "stockholding agreements" between REA and each stockholder. Under these agreements, the advances were to be deducted monthly from each stockholder's share of rail transportation revenue and had no fixed maturity date. The agreements expressly referred to the prior advances, which were to continue to be made until the 1929 bonds were actually retired.

The stockholding agreements provided that the advances were to be subordinated to the notes and were to bear interest at a rate fixed by the REA board but not to exceed 5 percent.

A December 17, 1938 letter from a member of the Finance Committee stated that the interest rate on the advances was a "wash transaction" since the result would be an equivalent increase in the amount of rail transportation revenue. The letter further stated that "even though this payment of interest was a bookkeeping transaction," the board had reduced the rate because "the picture of the owing railroads paying themselves 6% upon advances just to retire serially 5% bonds would be the unthinking accuse the management of milking the company at the instance of the larger railraods." He stated' "Again I repeat whatever is saved in interest is gained in rail transportation revenue.

Before the Commission acted on the application for authority to issue the notes, REA's general counsel sent a letter to the Commission's Director of Finance in which he referred to the application, enclosed a copy of the stockholders agreement, and inquired "whether the authority of the Commission is necessary for railroad companies to execute such agreements as constituting an assumption of obligation of liability under Section 20a." The Director replied by letter dated December 5, 1938, stating that it

was the "view of this bureau" that there was no need for section 20a approval since, in his view, the agreements did not impose any obligation on the railroads, which were merely "acquiescing" in acts performed by REA.

In response to an inquiry from an investment banker asking whether competitive bidding was to be required in the sale of railway bonds, the Chairman of the Commission, by letter dated November 25, 1938, referred to the REA notes offering then pending and stated that the Commission "has not adopted any requirement as to the offering for sale through competitive bidding bonds and other securities of railway companies, such equivalent requirement being applicable only to the sale of equipment-trust certificates."

On December 20, 1938, the Commission approved the issuance of $16 million of notes pursuant to section 20a. *Railway Exp. Agency, Inc., Notes,* 230 I.C.C. 478. In its report, division 4 made the following comments on the advnaces:

> Funds for the payment of the notes as they mature are in effect to be advanced pursuant to proposed agreements to be dated as of December 1, 1938, between the applicant and the several railroad companies constituting its stockholders. Under the terms of the agreements the applicant will deduct monthly from the share of rail transportation revenue payable to the several companies, computed under the provisions of the operating agreements with them, such an amount as will be sufficient to accumulate funds to pay the notes as they become due, the amount deducted monthly to be such proportion of the total principal amount to be paid as the number of shares of the applicant's capital stock held by that railroad bears to the total number of shares held by all the railroads which have entered into such agreements, the foregoing provisions to prevail except under certain conditions, as more fully set forth in the agreeement. These advances will bear interest at such rate not to exceed 5 percent per annum, as may be fixed from time to time by the applicant's board of directors, but all advances, either in existence at the date of the agreements or made pursuant to them, are to be subordinated to the payment of the notes issued under the proposed indenture. 230 I.C.C. 478, 479-80.

Following the issuance of the 1938 notes, all parties concerned continued to treat the advances as creating a valid debt of REA to the railroads. These parties included this Commission and United States District Court Judge Carrol C. Hincks, who was required to review the advances in December, 1938, in connection with the reorganization of the New York, New Haven and Hartford Railroad Company. Judge Hincks was provided with a detailed history of the origin of the advances by the General Counsel of REA, who justified the failure to use the surplus accounts for the sinking fund as a means of avoiding the contribution by nonstockholding

railroads to the purchase of REA. Their general counsel stated that the resolution of April 11, 1929, was adopted to "satisfy some of the railroads who, of course, would not have signed *** and also to satisfy *** the objection of some of the Commissioners, and in what they thought to be the fair thing to do, namely, that the stockholders should put up the money for the property ***" Judge Hincks concluded that REA's board of directors could lower the interest rate of the advances, a right contested by the Reconstruction Finance Corporation, to which the New Haven has assigned its advances.

At a hearing in 1947 before the Commission on a simplified accounting plan (the "economy plan") which REA had adopted, REA's vice president of accounting testified in detail concerning the history and nature of the advances in response to questions by Commissioner Splawn. The proceeding arose when the Commission questioned the legality of the economy plan under our pooling provisions of the Act. The REA vice president described the advances as an "unsecured obligation" that "is not evidenced by notes of any kind" and explained that REA had to "borrow" this money from its stockholders in order to pay the principal on the 1929 bonds and 1938 notes. He described the effect of interest payments on revenues as follows:

> The interest payments become a deduction in arriving at rail transportation revenue distributable on the carriers but inasmuch as the payments are made to our stockholding carriers and they receive over 99% of the rail transportation revenue, substantially the same carriers get the payments as would receive them in rail transportation revenue as if no interest payments were made.

In this report on this proceeding, *Express Earnings, Plan and Method of Division,* 278 I.C.C. 505 (1950), the Commission concluded that:

> Upon further consideration, we are of the opinion that the action of the Agency in adopting the economy plan without applying to us for a supplemental order was in no way unlawful. In considering the present arrangement, as well as its predecessor in 1920, we pointed out specifically that we were approving only the general plan for pooling and dividing earnings and were not passing upon the particular provisions of article V or any other part of the contract. *Express Contract* 1920, 59 I.C.C. 518, 523; *Railway Exp. Agency, Inc., Securities and Control* *** (the 1929 proceeding). 278 I.C.C. 505, 509.

The 1929 operating agreement was again considered by the Commission in a proceeding which has some similarity to the

present proceeding. In 1948, the United States brought an antitrust action against REA charging that those portions of the operating agreement which constituted REA as exclusive agent of the railroads violated the Sherman Act. REA petitioned the Commission to either clarify or supplement its prior orders under section 5(1). The district court granted a stay of the judicial proceedings. *United States* v. *Railway Express Agency, Inc.*, 89 F. Supp. 981 (D. Del. 1950). After conducting a hearing, the Commission complied by explicitly approving the exclusive agency aspect of the pooling agreement in both a report and order. *Express Contract, 1929*, 275 I.C.C. 739 (1951). Finding express Commission approval of the challenged activity, the district court dismissed the antitrust action. *United States* v. *Railway Express Agency, Inc.*, 101 F. Supp. 1008 (D. Del. 1951).

THE 1954 OPERATING AGREEMENT

In anticipation of the expiration of the 1929 operating agreement in 1954, extensive consideration was given to the problem of repaying the advances, especially in the event of liquidation of REA or withdrawal by one or more railroads. Several memoranda in the record indicate that in 1952, the eastern railroads were in favor of dissolving REA or withdrawing, with the western and southern roads opposing this.

By application filed July 24, 1953, a new operating agreement was submitted to the Commission for its authorization under section 5(1) of the Act. The agreement, which was to expire on December 31, 1973, was similar to the 1929 agreement. The provision for distribution of REA's earnings was rewritten and amplified in some respects, but REA continued to be a non-profit agency of the railroads. All its net earnings were to be distributed to the signatories of the 1954 agreement, which expressly provided that REA would have no net taxable income.

The 1954 agreement differed from the 1929 contract in providing that a railroad could withdraw before the expiration date of the contract. If a railroad withdrew, it was obligated to purchase all express company buildings on land owned by the railroad and might be required to purchase on demand other express company buildings, land or equipment used solely or chiefly on the lines of the railroad. The withdrawing railroad could apply up to 75 percent of its outstanding advances for the purchase price of the property. Remaining outstanding advances would not be redeemed but would

bear the same rate of interest as "borne by similar indebtedness owed by" REA and would be repaid when the other stockholders' advance were repaid. In the event of liquidation, the advances were to be subordinated to REA's other liabilities and were, along with capital stock, to be treated as "capital debt" for purposes of pro data distribution of REA's remaining assets. On November 4, 1953, the Commission approved the pooling provisions of the 1954 agreement. *Express Contract, 1954,* 291 I.C.C. 11. The Commission noted that the new provisions for withdrawal "should remove objections to the alleged monopolistic character of the exclusive-agency provision." 291 I.C.C. 11, 12.

Between 1954 and 1959, the status of the Non-Negotiable Debt was subjected to close scrutiny by the railroads, REA, banks and outside counsel on several occasions. It became important to determine whether the Non-Negotiable Debt should be considered debt or equity in connection with several transactions. These included: the question whether subordination of the Non-Negotiable Debt was required for REA to borrow from outside parties; the demand of Nevada Northern Railway, which had not signed the 1954 operating agreement, for repayment of its advances which demand was met; a proposed reduction of the interest rate on advances in 1955; and the status of the debt raised in 1957 by a bank making temporary loans to REA. Examinations of some depth were made in each instance and the resulting legal memoranda are included in the record of this proceeding.

While there was a substantial question whether the Non-Negotiable Debt should be considered debt or equity, it should be pointed out that the records contains no suggestion that the Non-Negotiable Debt is completely invalid, the position taken by REA in this proceeding. In each of the above-cited transactions where the debt-equity question was raised, the opinion was given that the Non-Negotiable Debt was debt and not equity and action was taken on that basis. The only exception to the "debt" view was expressed by a Vice President of REA, C. J. Jump, who was trying to convince the Guaranty Trust Company that it was unnecessary to have the railroads agree to subordinate the debt to a proposed loan by the bank to REA. In a letter of May 1, 1957, Mr. Jump states, "I have expressed the feeling that these advances do not represent a debt by Railway Express Agency to the stockholders". The lawyers for the bank disagreed, viewing the advances as a debt of REA, but decided not to require subordination.

In the memoranda discussing the debt-equity question, factors tending to the "equity" conclusion are given, such as contribution in proportion to stock-holdings, the absence of REA income to repay the principal of the Non-Negotiable Debt, and the indefinite terms for repayment. In support of the "debt" conclusion, it is pointed out the essential elements of a debt are present, since the amount owed is definite and the time for repayment-on demand after maturity of the outstanding notes-can be ascertained. Among the arguments supporting the "debt" conclusion, the following excerpt from a 1955 memorandum is of interest:

> There are several factors which do support the status of the advances as a debt. From the first the advances have been so treated and interest has been paid thereon without objection from any of the parties in interest. The advances are set up on the books of the agency under the heading 'Non-Negotiable Debt to Affiliated Companies.' Such open account advances are quite common in the practices of carriers in dealing with subsidiary and affiliated companies. The strongest of all is the fact that in the report of the Commission in Finance Docket No. 12242, *Railway Express Agency, Inc., Notes,* 230 I.C.C. 478, (1938), the Commission, in passing upon the refinancing of the then outstanding bonds of the original indebtedness, in order to avail of lower interest rates, specifically referred to the agreement dated December 1, 1938, between the Railway Express and the stockholding railroads, under which the arrangement of advances was to be continued and a rate of interest not to exceed 5% per annum thereon was to be paid. The Commission thereby gave it approval of the arrangement at least insofar as it affected the financing then under consideration.

THE 1959 OPERATING AGREEMENT AND THE 1959 NOTES

In the report of division 3 dated September 21, 1959, in *Express Contract, 1959,* 308 I.C.C. 545, the events leading up to the 1959 application to substitute a new agreement for the 1954 operating agreement are described. The dissatisfaction of the railroads with their express operations since 1954 had been evidenced by the withdrawal of several smaller carriers. One large eastern carrier had served notice of its intention to withdraw at the end of 1959 and there were indications that other eastern carriers would follow. The report attributes these actions to the out-of-pocket deficits the railroads were experiencing from their express traffic, which amounted to approximately $16 million in 1955, $24.5 million in 1956, and $40 million in 1958.

These losses from the express business, which the railroads had incurred in varying amounts since 1929, are referred to by the railroads in the instant proceeding as the "Railroad Subsidization of REA". REA naturally objects to this terminology since it claims the

railroads were enormously enriched by REA on the basis of the investment of only $100,000. It is clear that there was a net annual multi-million dollar deficit from the cost to the railroads providing services and facilities to REA for express operations despite their revenues from REA. See *Express Rates, 1938-1939,* 231 I.C.C. 471, 505 (1939) (refers to Federal Coordination to Transportation study which shows expenses and taxes in express service exceeding receipts in 1933 by $54 million); *Increased Express Rates and Charges, 1946,* 269 I.C.C. 161, 179 (1947) (express revenues $91 million less than costs in 1946); and *Express Rates and Charges, 1953,* 289 I.C.C. 249 (1953) (express deficit of $92 million in 1951 and $47 million in 1952). It is also clear that REA was not bearing any of these large losses. This was due to the nature of REA, which was established as a non-profit agency which would have no net income. If REA's own expenses increased faster than its revenues, REA's expenses would be fully covered while the amounts paid to the railroads would decrease proportionately, even though the railroads' own costs for carrying express might be increasing. Commissioner Eastman used the objectionable term when he called REA "in effect a subsidized company" since the railroads "assumed the real financial burden of the express business." *Express Rates, 1938-1939,* 231 I.C.C. 471, 505 (1939).

The exact amount of losses being borne by the railroads from the express business and the causes, be it discontinuance of passenger trains or motor vehicle competition, are not material to our inquiry herein. REA has produced some evidence that, in certain instances, railroads were benefitted by their loss operation of express service since the losses from continued passenger train service would be even greater without express service. The debate of the parties on this point need not be further described. It is sufficient to state that the losses being borne by the railroads from the express business were sufficient to cause them to propose significant changes in REA's operations.

A committee appointed by the REA board recommended that a new operating agreement be adopted which would put REA on a profit and loss basis. The committee also recommended that, "In connection with the new contract," REA issue notes to evidence the Non-Negotiable Debt with the purpose being "to make clear that the advances are in fact debts, and to establish formally the circumstances under which such notes becomes due and payable." On July 15-16, 1959, the REA Board of Directors authorized the

issuance of promissory notes to evidence the Non-Negotiable Debt, and authorized the execution of a new operating agreement.

The principal objective of the new SEOA was to end REA's traditional nonprofit mode of operation in the hope that this would lead to greater efficiency and cost consciousness on the part of REA's officials and employees, and that improved performance would make REA a profitmaking entity. The distribution to the railroads of REA revenues on a percentage basis was to be replaced gradually by a system whereby REA would purchase rail space on a basis related to the railroads' out-of-pocket costs. The transaction was to be completed by January 1, 1963, at which time half of the express revenue remaining after payment of REA's operating expenses and rail transportation charges would be retained as profit by REA. The provision in the 1954 agreement that REA would have no taxable income was deleted.

The 1959 contract also made significant changes in the provisions for withdrawal. Under the 1954 contract, a withdrawing railroad was required to purchase the express property located on its line and to pay its proportionate share of REA's total liabilities. In contrast, the 1959 SEOA provided that any railroad could withdraw from the contract after June 30, 1969, on 12 months' notice and the capital stock of REA held by the railroad would be sold to REA at its original cost.

On July 23, 1959, an application for authorization under section 5(1) of the pooling provisions of the new agreement was filed with the Commission. A hearing was held on the application of August 18, 1959, before two Commission hearing examiners. The transcript indicates that William B. Johnson, president of REA, in outlining the new plan for continued operations of REA, testified:

> Another feature of the plan is the issuance of notes to the railroads to cover their loans to the Express Company which have heretofore been carried on the Express Company's books simply as an open account debt to affiliated companies. An application for authority to issue these notes will be filed with the Commission in two or three days.

An application seeking authority pursuant to section 20a to issue the notes to evidence "existing indebtedness *** heretofore carried by (REA) as an open account on its books" was filed on September 1, 1959. The pooling application was approved on September 21, 1959. *Express Contract, 1959,* 308 I.C.C. 545. In its report, Division 3 commented on the new pooling arrangements, noting that, "In some respects the proposed agreement removes grounds of

criticism directed to previous contracts. The conditions for withdrawal of dissatisfied participants are liberal and reasonable." 308 I.C.C. 545, 550.

By order dated September 25, 1959, Division 4 of the Commission authorized REA to issue to 66 of its controlling railroad companies "5-percent non-negotiable promissory notes in the total principal amount of $27,637,053.80" in order to evidence the indebtedness arising from "funds advanced to it on open account to pay the principal amount due on the bonds and notes by it" in 1929 and 1938. The notes were to mature in December 31, 1973, and provided that 10 percent of REA's profits under the 1959 operating agreement after January 1, 1965, would be set aside to make payment on principal. No dividends could be paid by REA until the notes were discharged. In approving the issuance of the notes, the Commission found the issue to be "for a lawful object", "compatible with the public interest", "necessary and appropriate for and consistent with the performance by (REA) of service to the public as a common carrier, and which will not impair its ability to perform that service."

On three different occasions subsequent to the 1959 order approving issuance of the notes, the Commission considered and approved modifications of the 1959 order. These include a modification in 1969 to permit subordination, authorization to consolidate notes in 1963, and the removal of the requirement that shareholders be railroad corporations in 1962.

SALE OF REA

The events following the 1959 orders are well summarized by Judge Metzner:

> In the next several years, the earnings picture for the company got no better, and in 1967 and 1968 REA management made several unsuccessful attempts to find a purchaser for the REA stock owned by the railroads. REA's financial adviser informed management that no interested purchaser would be found unless the 1959 operating agreement was terminated and REA freed from railroad control. In light of this advice, most of the shareholding railroads deposited their stock in a voting trust on June 10, 1968, the trustees of which were not associated with the railroads. The trustees were given full powers of shareholders, including the power to sell their shares if the owners of voting trust certificates representing a majority of the deposited stock approved the sale. In addition, by June 18, 1968, it was agreed that the 1959 operating agreement be terminated on December 31, 1968. 343 F. Supp. 851, 855.

In November 1968, Spenser D. Moseley was hired as President and Chief Executive Officer of REA and set about "building a new management team". By February, 1969, F. Ralph Nogg, Edwin G. Ross, Tom Kole, and Miklos Korodi had joined REA in senior executive posts. In June, 1969, these five REA executives offered to form the REA Holding Corporation for the purpose of purchasing the stock of REA. Under the offer, the Holding Corporation, which was to be controlled by the five executives, would purchase the outstanding REA stock held by the railroads at $1 per share plus warrants to purchase shares of the Holding Company at various times and prices. With slightly more than 2 million shares of REA outstanding, the purchase price would thus be approximately $2 million.

The offer provided, as to the price of the stock to be purchased by exercise of the warrants, that:

> the purchase price may be paid either in cash or by cancellation of 5% Notes due December 1, 1973 (' 5% Notes') or 5% Subordinated Notes due December 1, 1973 ('5% Subordinated Notes').

The offer also stated that:

> the Holding Company will contribute all cash proceeds received by it from exercise of Warrants to REA, and, so long as there are outstanding any 5% Notes or 5% Subordinated Notes, such cash proceeds will be set aside and used solely to pay principal and interest on such 5% Notes and 5% Subordinated Notes.

The offer was accepted on behalf of virtually all railroad stockholders and the sale was consummated in August 1969. The final sale embodied the terms of the offer in recognizing that the warrants could be paid for with the 5 percent notes, and in convenanting that the Holding Corporation would apply cash received in exercise of the warrants to payment of the principal and interest on the 1959 notes.

After the new owners took control of REA, they continued until September 1971, to make the semi-annual interest payments on the 1959 notes as they fell due. At that time, REA, under its new ownership, filed a complaint in the United States District Court for the Southern District of New York initiating the legal action described herein as the REA Lawsuit.

DISCUSSION

I. WAS THE NON-NEGOTIABLE DEBT "DEBT"?

The critical event leading to our involvement in this proceeding on reconsideration appears to us to be the filing of a memorandum of September 5, 1972, on our behalf in the REA Lawsuit, which memorandum contained the following statements:

> The Commission desires the views of the parties on their basic assumption that the non-negotiable debt consitutes evidence of indebtedness. If the non-negotiable debt in fact represented but railroad equity in REA, then much of the present controversy may evaporate, and the 1959 notes perhaps were incorrectly approved.

The court was thus presented with a suggestion of error by an administrative agency, a request by that agency for an opportunity to rectify the error, and the further suggestion that agency action would resolve much of the controversy before the court. While the Judge responsible for the case, Judge Metzner, did not accept the offer, a three-judge panel did, on appeal, accepting at the same time our offer to explore certain antitrust questions raised inthe REA Lawsuit.

We will first consider the nature of the Non-Negotiable Debt. Before giving our own views on this issue, we will outline the contentions of the railroads, of REA, and of the Office of General Counsel. We wish to make it clear that we are here discussing the views of the Office of General Counsel expressed at the earlier stages of this proceeding. We can assure the parties that, in accordance with our order of June 11, 1974, the Office of General Counsel has not particpated, in any manner, in the decisional process concerning the merits of this proceeding. However, we feel it appropriate to discuss certain contentions emanating from the Office of General Counsel on this issue, due to the active role taken by that Office in initiating our participation in this proceeding and framing the issues, and due to the contention put forward by that Office that the Non-Negotiable Debt may represent "equity", a proposition rejected by both the railroads and REA.

It may be useful to set forth again the questions in our order of January 9, 1973, relating to this issue:

> 1. Did the non-negotiable debt represent the build-up of railroad equity in REA by its railroad parents?
>
> 2. Did REA's repayment of that debt or interest thereon represent a return of or on equity capital?
>
> 3. If the answer to numbers 1 or 2 is "yes" what legal or practical consequences should flow from that finding?

As pointed out above, neither the railroads nor REA contends that the Non-Negotiable Debt represented an equity interest. Therefore they both treated these three questions as a single matter, with the railroads maintaining that the Non-Negotiable Debt represented "debt" and REA characterizing the Non-Negotiable Debt as either "sham" or "void". Put another way, the parties answered questions 1 and 2 in the negative, which disposed of question 3. We will follow the treatment chosen by the parties.

A. RAILROADS' CONTENTIONS

In support of their position that the Non-Negotiable Debt represented debt, and not equity, the railroads argue that the intent of the parties at the time of the inception of the advances in 1929 demonstrates clearly that a debt obligapion was being created. They point to the April 11, 1929, resolution of REA's board of directors which established the deductions from stockholders, provided that the deductions be treated as advances, and further provided that the advances should bear "interest" and referred to "the *indebtedness* of (REA) represented by such advances". [Emphasis added].

Having established that the parties to the obligation believed they were creating debt in 1929, the railroads proceed to their main argument, that REA, the railroads, and third parties including banks and this Commission, consistently regarded the advances as creating debt for a period of 30 years. The period is 40 years, if the decade between the issuance of the 1959 notes for the Non-Negotiable Debt and the filing of the REA suit is counted. REA carried the obligation on its books as "Non-negotiable debt to affiliated companies—Advances" from 1929 onward, and so advised the railroads. REA's first annual report to the Commission reported the obligation as "funded debt" and described it as "Non-negotiable debt to affiliated companies—advances." In REA's income statement filed with the Commission, the interest paid on the debt was shown in an account labeled "interest on funded debt". REA's subsequent Annual Reports showed the debt and interest payments in the same fashion.

For tax purposes, both REA and the railroads treated the advances as creating debt and not equity. The interest paid on the Non-Negotiable Debt was deducted as an expense by REA, and not treated as a dividend, which would have resulted in taxable income of REA. The interest was treated as "interest income" by the railroads. The railroads took into income for tax purposes the full

amounts which they advanced to REA by means of deductions under the April 11, 1929, resolution. In their brief, the railroads contend that they would not have incurred this substantial tax liability over the years if the advances had been viewed merely as a measurement of the build-up of railroad equity in REA as REA's bonds were retired.

The railroads maintain that the repayment of certain advances in the 1930's is further evidence of their treatment as debt. These include the repayment to the railroads of $338,097 in 1935 and $2.4 million in 1936, as well as the 1938 repayment to stockholding railroads of $255,407 in connection with the sale by Southern Railway of its express business to REA.

When the 1929 bonds were refinanced through the issuance of notes in 1938, agreements were entered into with the stockholding railroads which, the railroads contend, made it clear that the advances were to be considered as debt and not equity. The Commission recited the terms of the agreements in its report authorizing the notes and stated that the advances would "bear interest". The Commission's Director of Finance expressed his view that authorization under section 20a of the railroads' assumption of liability was not necessary since the agreements were "merely an agreement to loan money" to REA, or to permit REA "to defer payment of a portion of Rail Transportation Revenue and pay interest thereon.,,

Other indicia of consistent treatment of the advances as creating debt are the 1938 review by Judge Hincks of the New Haven reorganization court, described above, and an investigation of REA by the Internal Revenue Service in the 1940's. While REA was found to have tax liability in a number of respects no suggestion was made that the Non-Negotiable Debt should be treated as equity for tax purposes.

Upon the expiration of the 1929 operating agreements in 1954, substantially similar operating agreements were adopted, with Commission approval. The new agreements referred to the advances as "indebtedness" which were entitled to interest payments. The agreement provided that a withdrawing railroad could apply up to 75 percent of its advances against the purchase price of the express properties it would be obliged to purchase withdrawal. The railroads contend that such a right to redeem a fixed value in advances is inconsistent with the concept of advances as a form of equity. The remaining advances were to bear the same rate of interest as similar "indebtedness" owned by REA and would be repaid when the other stockholders' advances were repaid.

Finally, the railroads refer to the consideration given the Non-Negotiable Debt by lawyers for REA, the railroads and banks in the 1950's, resulting in several memoranda discussing the question. These are described above. With the exception of Mr. Jump's "feeling" that the advances do not represent a debt, the opinions consistently conclude that the advances did create a debt. The railroads close their statement on the historical record of the Non-Negotiable Debt by stating, "For the Commission now to rule that the incurring of that debt or the repayment of that debt or interest thereon was in fact a build-up or a return of equity capital would be flatly inconsistent with 30 years of accounting, tax, corporate, the financial treatment of the advances as a debt obligation."

In a specific reponse to our question No. 1 above regarding a "build-up of railroad equity "through the Non-Negotiable Debt, the railroads point out that there could be no "build-up" of their equity, since the railroads making advances always held 100 percent of REA's equity through their ownership of all of REA's outstanding stock. The railroads conclude their argument in support of the "debt" character of the Non-Negotiable Debt by outlining the stringent criteria under the Federal tax laws. They refer to *In re Eastern Erectors, Inc.*, 346 F. Supp. 293 (E. D. Pa. 1972), *affirmed*, 485 F. 2d 679 (3d Cir. 1973) in which the following factors were described as a "typical list of the guiding considerations":

> (1) the names given to the certificates evidencing the indebtedness; (2) the presence or absence of a maturity date; (3) the source of the payments; (4) the right to enforce the payment of principal and interest; (5) participation in management; (6) a status equal to or inferior to that of regular corporate creditors; (7) the intent of the parties; (8) 'thin' or adequate capitalization; (9) identity of interest between creditor and stockholder; (10) payment of interest only out of 'dividend' money; (11) the ability of the corporation to obtain loans from outside lending institutions. 346 F. Supp. 293, 297.

They contend that the Non-Negotiable Debt qualifies as "debt" by most of these standards, with the conclusive demonstrations of this characterization being the failure of the Internal Revenue Service to question this treatment in their extensive review of the financial arrangements of REA.

Since they believe that the foregoing demonstrates that "the Commission's approval of the issuance of the notes in 1959 was soundly based on the extensive record of 30 years of treatment of the advance as debt", the railroads state that they find it difficult to respond to our question No. 3, which concerns the legal and

practical consequences of a finding that the Non-Negotiable Debt is equity. However, they do offer certain "observations". First, they discuss the consequences of having paid off the 1929 bonds without using advances and creating the Non-Negotiable Debt, but by deducting the necessary amounts before computing rail transportation revenues payable to the railroads. Had this system been followed, the stockholding railroad would have acquired 100 percent ownership over the years of an entity with some $30 million in properties which had paid off its initial indebtedness. In the arrangement actually followed, the stockholding railroads acquired 100 percent ownership of an entity with assets of roughtly $30 million and with debt to them of about $28 million. Since no one has demonstrated that the choice between the two methods had any affect on REA's ability to perform its service to the public and the interests of third parties were not jeopardized, the railroads question whether the choice of using one method or the other should be of any consequence to the Commission in performing its duties under section 20a.

Secondly, the railroads question the legal significance of any finding that the Non-Negotiable Debt is equity. Such a finding does not necessarily lead to the conclusion that the 1959 notes were "incorrectly approved" or that the order approving the notes should be altered or revoked. They maintain that there is nothing in section 20a that makes the characterizing of an instrument as debt or equity determinative, and that there is no reason why promissory notes could not be issued in exchange for stock or other equity securities. All the terms and characteristics of the Non-Negotiable Debt were before the Commission in 1959 when it approved the notes. The railroads state, "If the Commission were now to believe that in fact i misconstrued the legal status of the open accounts and that they reflected $27,600,000 worth of equity, it can still regard the notes as properly issued and for adequate consideration. To do otherwise and suggest that the !27,600,000 is now to be wiped out irretrievably, would be incomprehensible."

In view of our conclusion on this issue, we do not reach the interesting question whether a finding by us that the Non-Negotiable Debt is equity would have *any* legal consequences. There is merit in the railroads argument that our review of the "rights" of the railroads being exchanged in consideration for the 1959 notes was legally adequate under section 20a and that the subsequent characterization of these rights as being in the nature of "equity" rather than "debt" does not vitiate our order. This argument may

explain the reluctance of REA to accept any description of the Non-Negotiable Debt as "equity". Of course, this argument also raises some question as to the soundness of the position we took before the court in the REA lawsuit (quoted at the beginning of this section), since the clear implication is that finding the Non-Negotiable Debt to be equity would prove our 1959 order authorizing the notes to be "incorrect".

REA'S CONTENTIONS

As stated above, REA, while denying the validity of the Non-Negotiable Debt, does not contend that the Debt represents an equity interest. Counsel for REA expressed curiosity as to the origin of the "debt-equity" question at the hearings in this proceeding. At one point, an REA attorney advised the Commission's General Counsel, "The debt ore quity question has not been raised in our lawsuit either by the railroads or by REA, so that if you were informed that debt or equity were somehow involved in that lawsuit, you are misinformed." Transcript, p. 432, August 7, 1973.

Despite their reservations as to importance of the "debt-equity" posed in our questions, REA responded at length. Its position is that the Non-Negotiable Debt represents neither debt nor equity, but "the railroads' misappropriation of capital and revenues belonging to REA". REA contends there never was a valid debt which could provide legal consideration for the issuance of the 1959 notes. Accordingly, the Commission should vacate its 1959 order authorizing the notes.

REA contends that the Non-Negotiable Debt would never have been created if the plan presented to the Commission in 1929 had been followed. REA points to the account in the 1929 operating agreement described in some detail above which was entitled "Surplus Applied to Sinking and other Reserve Funds". Amounts allocated to this account were to be deducted before determination and payment of "Rail Transportation Revenue". REA also refers to the proof of indenture tiled with the Commission on January 31, 1929, which speaks of sums being "set aside" for payment of the bonds when due "before making payment" to the railroads of sums due under the operating agreement. Finally, REA quotes from a "descriptive letter" furnished the underwriter of the bonds, which letter accompanied the prospectus used in the sale of the bonds, "The Operating Agreements provide that the net receipts of the Corporation, after deduction of *** the sinking fund payments ***, are to be distributed among the Participating Railroads ***."

REA charges that "the railroads engaged in a consciously deceptive course of conduct" in adopting a system of repayment of the bonds which was contrary to the representation set forth above and contrary to what the Commission approved in 1929. In support of this charge, REA recites the activities of the directors, officers and attorneys of the railroad concerning the sinking fund question which took place in early 1929 and culminated in the April 11, 1929, Board of Directors resolution establishing the advances and the Non-Negotiable Debt. While the facts surrounding these activities are undisputed, legal conclusions drawn from them differ. REA maintains that the effect of these activities was "to create a purported 'debt' owned by REA to its stockholders where no debt existed nor could have existed under the plan submitted to the Commission."

REA also contends that the Non-Negotiable Debt is void because the transaction involved the issuance of a security which was required to be approved by the Commission pursuant to section 20a of the Act. The security involved would be an "evidence of indebtedness." This contention may be inconsistent with its claim that no debt was created, but REA is entitled to plead in the alternative. REA refers to the letter dated March 24, 1931, from REA Vice President Charles Lutz, stating that, "No notes, receipts or other forms or evidences of indebtedness were issued for those advances, because to issue notes would have necessitated the approval of the Interstate Commerce Commission." It is REA's concention, however, that "evidences of indebtedness" were issued. While REA does not state which particular instrument may be an "evidence of indebtedness," it appears to be claiming that any or all of the following may be so regarded: the letter of June 18, 1929, from Mr. Lutz to stockholding railroads advising them of the deductions to be made and the REA account to be opened entitled "Non-negotiable debt to affiliated companies—Advances", stating the interest to be paid, and enclosing a copy of the April 11, 1929, resolution; the monthly "advices", signed by Mr. Lutz, which were sent to the railroads, giving the estimated amount due the railroad for its express business, the amount of the advance, the "net amount payable", and stating that a check for the amount of interest indicated would be forwarded "on or before the last day of the month"; and a statement or coucher accompanying each check in payment of interest, which referred to the April 11, 1929, resolution. In his letter on March 24, 1931, quoted above Mr. Lutz

also stated, "It was assumed that the advices *** would be sufficient to evidence the indebtedness."

REA contends that the railroads have engaged in a devious course of conduct, i. e. using open account advances, to avoid requesting Commission authorization under section 20a, since the Commission would not have approved this scheme. REA goes on to argue that the consideration of the advances by the Commission in 1938 and at other times after 1938 is of no consequence since section 20a declares securities to be void, "if issued or assumed without such authorization therefor having *first* been obtained ***" (Emphasis added.)

As an additional argument, REA maintains that the Non-Negotiable Debt was not a genuine debt, because repayment was not possible at the time of its creation; no outside lender would have made the loans; it was not payable on a date certain; it created "thin" capitalization; it was issued to stockholders in proportion to their stock ownership; and it was subordinated to other debts. The foregoing are criteria often used in tax cases to determine the validity of debt for tax purposes. Several of these criteria were also mentioned by the railroads in their evaluation of the Non-Negotiable Debt from a tax standpoint. Not surprisingly, the railroads and REA reached opposite conclusions as to the status of the Non-Negotiable Debt under the Internal Revenue Code.

Finally, REA claims that, "No monies were advanced from the railroads to REA; the so-called advances therefore were a sham." In support of this claim, REA relies heavily on a "Report and Order on Prehearing Conference" served June 18, 1973, by Administrative Law Judge von Rinteln. REA refers to this report frequently in its brief. The report was issued in connection with the proceedings described above which followed REA's petition of March 1, 1973, seeking discovery with respect to alleged *ex parte* communications by the Office of General Counsel, and REA's petition of March 5, 1973, seeking discovery on the merits of the proceeding. By order dated April 10, 1973, discovery before an Administrative Law Judge was ordered by the Commission. The discovery proceeding was assigned to Administrative Law Judge von Rinteln. Following an initial prehearing conference, on June 18, 1973, a report and order of Administrative Law Judge von Rinteln was served in which the procedures and a time-table for discovery were established. Included in this document was an extended discussion of the merits of this proceeding as well as conclusions on the factual and legal

matters raised by the Commission in its order reopening the proceeding. Certain railroad parties to this proceeding filed a motion to strike this discussion on the grounds that the Administrative Law Judge's statement of his conclusions on the merits of this proceedings clearly exceeded the task he was assigned by the Commission. However, he was apparently motivated by a sense of fairness to the parties. As he stated in the report, "The parties were advised at the initial session of the pre-hearing conference of the foregoing views of the Administrative Law Judge; i. e., that REA has already made a case for voiding the non-negotiable notes." p. 13.

The conclusions of the Administrative Law Judge may be stated succinctly in his words, "Thus, the pooling agreement approved by the Commission provided for no debt obligation as between the Express Agency and the stockholding railroads; no money was ever actually advanced to the Express Agency by the stockholder railroads; and the procedures followed were contrary to those provided in the pooling agreement. It follows therefore, that there never was a debt owing the railroads by REA *** Since there was no debt, it follows there was no consideration for the 1959 notes. In such circumstances the Commission would be warranted in vacating the 1959 approval of the notes." p. 13. In this respect, our order of July 25, 1973, denied said motion to strike as the matter entitled "Tentative Statement of Facts and Conclusions Based on Facts Already of Record" was properly described as tentative only, did not act to prejudge the case or to limit the scope of the discovery sought herein, and was not shown to prejudice materially the railroad movants.

OFFICE OF GENERAL COUNSEL'S CONTENTIONS

As stated above, we wished to discuss the view of the Office of General Counsel separately from that of the parties. While it may be a disservice to that Office to attribute the above conclusions of the Administrative Law Judge to it, the reasoning leading to the conclusions is quite similar to that espoused by the Office of General Counsel at that time, and we find this a convenient avenue to such a discussion. We will complete our exploration of REA's contentions by returning to its claim that, "No money was advanced from the railroads to REA", a conclusion common to, if not based upon, the April 10, 1973, report.

Administrative Law Judge von Rinteln's conclusion that "no money was ever actually advanced" by the railroads rests on his untenable finding of an "inconsistency" in both the April 11, 1929, resolution establishing the Non-Negotiable Debt and the advances and our 1938 order discussing the debt and advances. The 1929 resolution and the 1938 both describe an arrangement whereby REA will deduct sinking fund payments after compution of rail transportation revenue and payment of interest on the amounts deducted, with these deductions to be called "advances". However, the Administrative Law Judge states, "One thing the resolution did *not* do was to provide for paying the sums for sinking fund payments into the hands of the stockholder railroads." (Emphasis in original.) p. 9. This same "inconsistency" appears in our 1938 report. p. 11. The Administrative Law Judge appears to have concluded that no "advance" could be entered on the books of REA unless there was some physical transfer of funds to the railroad which was then returned to REA as an advance. This is apparently also the basis for REA's claim on this point.

The two other critical findings of fact in the April 10, 1973, report quoted above which relate to differences between the sinking fund procedures adopted in 1929 and the description in our 1929 report have been the subject of extensive attention in this proceeding. Without the benefit of the evidence received through discovery and the argument by the parties in this proceeding, the conclusions April 10, 1973, appear premature.

The two legal conclusions in the report that "there was no debt" and that "the Commission would be warranted in vacating the 1959 approval of the notes" are echoed in the deposition of the Associate General Counsel who testified in this proceeding that, on his own initiative, he had prepared a memorandum to the Commission on the REA lawsuit:

> My reading the material that I was able to gather convinced me that there never had been any indebtedness, in other words, I thought that the Commission should on its own motion consider whether the permission that it granted, the approval that it granted in 1959 for REA to issue notes, was properly done in the Interstate Commerce Act.
>
> Again, it occurred to me that if this so-called non-negotiable debt was in fact equity built up in REA by the Railroads, that the Commission perhaps granted approval in 1959 in an inappropriate case." Transcript, p. 501, Aug. 8, 1973.

While the Administrative Law Judge agreed with the Associate General Counsel on the absence of any debt, he did not characterize

the obligation created as "equity". In fact, Administrative Law Judge von Rinteln stated in the July 26, 1973, hearing that he was "somewhat annoyed" by the "debt-equity" terminology. Transcript, p. 236. Since, as stated above, the "debt-equity" issue was not raised in the REA Lawsuit by the railroads or REA, counsel for REA attempted to ascertain its origin. After determining through interrogatories that the Associate General Counsel quoted above had been responsible for the drafting of the first three questions in our January 9, 1973, order, all of which concern the debt-equity question, the Administrative Law Judge asked the Associate General Counsel, "Did it (the issue) have its genesis in your own mind, or from someone outside the Commission, sir?" The reply was, "completely within my own thinking; completely within my own mind." Transcript, August 8, 1973, p. 562.

CONCLUSIONS

The foregoing exposition of what we have termed "the views of the Office of General Counsel", rightly or wrongly, has been for the purpose of setting forth the legal motivation for our reentry into this proceeding. We can now re-examine the grounds for our action in our reopening of January 9, 1973, in light of the vast infusion of evidence since that time. As to certain of the legal arguments raised by the Office of General Counsel at the time of the reopening, we find them to be of slight consequences. As to others, the issues raised were valid and the evidence received was necessary in order to evaluate their merit. While we disagree with the conclusions reached by our staff in 1973, our disagreement is based on the evidence produced in this proceeding, primarily through discovery. It is this aspect of our efforts which we hope will be of assistance to the district court when it considers this matter.

The major issue raised by the Office of General Counsel, "Did the non-negotiable debt represent the build-up of railroad equity in REA by its railroad parents?", received perfunctory and negative responses from the parties. We agree with the parties that there are virtually no grounds for terming the Non-Negotiable Debt an "equity" interest. For the same reason, we also concur in the negative response to the parties to question No. 2 in our January 9, 1973, order, which asks if the repayment of the debt or interest thereon represented a return of or on equity capital. Having disposed of the "equity" question, we are still left with the question whether the Non-Negotiable Debt was in fact, "debt".

The parties responded at length on the issue whether any debt existed and this will be further discussed below. In most respects, their arguments were on different grounds than that of the Office of the General Counsel, which appeared to be contending that no debt could have been created since no moneys were actually paid to the railroads from which the railroads could make the advances to REA. This argument, as set forth in the Appendix 10, 1973, report, holds that, so long as REA deducted the sinking funds payments before transmitting rail transportation revenue, no obligation could be created on the part of REA for the advances. This contention is totally without substance and we cannot agree. We see no legal prohibition against an agreement which provides that a portion of moneys due a second party (the rail transportation revenue due a railroad) can be deducted by the party receiving the moneys originally (REA) to fulfill an obligation of the second party and create a valid debt without physically transmitting the moneys to the second party. The parties did so contract in this case.

The third and final argument of the Office of General Counsel was that procedures followed by the parties in 1929 differed from, or "were contrary to", the procedures approved by the Commission in its 1929 order approving the operating agreement. This is also the major argument of REA. Given the facts available in 1972, there was legitimate cause for concern that the Commission had been misled in 1929. As the situation appeared to us in 1972, and as it was described in Judge Metzner's opinion, through the action of the REA Board of Directors *immediately following* our approval of certain transactions in 1929, a system involving "non-negotiable debt" and "advances" was established. No mention of either the non-negotiable debt or advances was found in our two 1929 reports on the transactions and the result of these then unauthorized transactions was the creation of some $30 million in debt. Viewed in this light, the alarm shown by the Office of General Counsel seems appropriate. Even if the most damaging assumptions are made with regard to these events, however, we are not necessarily led to the conclusion that we are thereby compelled to revoke and order made 30 years later approving the notes of REA. Unless approval under section 20a is required, a matter discussed below, the failure of the railroads to follow the procedures described in our reports would not render the Non-Negotiable Debt void, and, accordingly, would not require revocation of the 1959 order approving the notes.

In any event we are not called upon to rule on the consequences of a conscious deception of the Commission in 1929. From the evidence received in this reopening, we are satisfied that the railroads, and the fledgling REA, had sufficient business reasons for the change in sinking funds procedures and that the timing was not arranged to mislead the Commission. As was brought out in this proceeding, the objections of the Williams roads were raised at a late and critical stage in the establishment of REA, when signatures were being gathered from the scores of other railroads. The objections were made known to the Commission before any rulings were made. The desire of the Williams roads to firmly and fairly fix rights upon liquidation are understandable in view of the amounts involved and the hazards of entering into an untried venture. Given the uneven record of the previous arrangements for handling express business, it was not unlikely that a new start might be soon made again. In addition, the problem of the short line roads contributing without a compensating benefit was a legitimate concern.

With respect to the alleged deviation from the procedures approved by the Commission in its 1929 orders, we question whether this charge, even if proven, would require us to revoke the order which the district court has directed us to consider, our 1959 order approving the notes. We think it clear from our 1929 report that we were not requiring any specific method of accounting for the sinking fund and computing rail transportation revenues:

> In arriving at the amount of such revenue, provision is made under item (j) of section 4 of this article for deducting certain profit and loss debit items therein enumerated, including surplus applied to sinking funds or set aside for investment in physical property. The effect of this will be to reduce the operating revenues of the railroad carriers which they derive from express traffic by amounts which are in reality appropriations of surplus. It should be understood that all that we are here passing upon is the plan for pooling and dividing earnings and *we are not passing upon other provisions of the contract, such as that mentioned above.* Nothing herein contained is to be construed as an expression of opinion upon the propriety of such deductions in connection with the determination of recapturable income under section 15a of the Interstate Commerce Act." 150 I.C.C. 423, 434. [emphasis added.]

The last sentence indicates that we had some question about REA following the accounting method that REA now insists should have been followed. From a review of our own records and the new evidence received, we are satisfied that the Commission was adequately advised of the possibility of alternate methods of accounting for the sinking fund. This appears to be reflected in our report, which we view as permitting the method finally adopted.

In any event, the compliance or non-compliance with the 1929 report is peripheral to the central issues to which the district court directed our attention: whether the Non-Negotiable Debt is, in fact, "debt;" and whether the "1959 order was correctly or appropriately issued." We have reviewed the treatment of the Non-Negotiable Debt over a period of 40 years by the railroads, REA, third parties, including banks, and the Commission, and we have found a practically unanimous acceptance of this instrument as a debt. The evidence in support of the "debt" characterization includes action by businessmen and bankers involving substantial sums of money, opinions by attorneys knowledgeable in the field and action or forbearance by government agencies, including the Internal Revenue Service and ourselves. (Among our own actions is our 1928 report indicating our awareness of the system of interest-bearing advances, and our 1938 order authorizing an issue of notes to be repaid through this system.) Many persons and businesses have acted in reliance upon the Non-Negotiable Debt being debt. This would include the present owners of REA who purchased it for slightly over $2 million in 1969. It was clear from the purchase negotiations and terms that sellers and buyers assumed of the 1959 notes were valid. We are certainly not basing our decision on the fact that the new owners would receive a $27 million wind-fall, but we do mention it as one not insubstantial consequence of revoking our 1959 order. From the foregoing, we conclude that the Non-Negotiable Debt is in fact, debt.

We also conclude that our 1959 order approving the issuance by REA of notes in exchange for Non-Negotiable Debt was not "incorrectly" or "inappropriately" issued due to any lack of consideration for the notes. In order to reach this conclusion, of course, we have considered and rejected one final argument of REA on this issue, the applicability of section 20a of the Act to the advances and the Non-Negotiable Debt. REA contends that a "security" was issued without prior authorization by the Commission. Therefore, REA argues, the unauthorized debt is void and the 1959 order falls for lack of consideration. We cannot agree. The Commission has consistently held that "advances" are not securities subject to the requirements of section 20a. In addition, the instruments cited by REA in support of its argument cannot be considered "evidence of indebtedness."

The status of "advances" under section 20a has been considered by us several times in the recent past. In 1971, we instituted a proceeding entitled "Ex Parte No. 275, Expanded Definition of

Term 'Securities,' " in which we proposed to "expand" the term "securities" referred to in section 20a(2) to include a number of different financing instruments, including advances. After receiving public comment, we decided against this expansion, stating:

> Reports filed by committees of Congress relating to the Transportation Act of 1920 do not specify what would be included in the term "securities" other than the language of the act itself. Our review of the legislative history confirms the contention of the opposing parties that all references were limited to stocks, bonds, and promissory notes. Accordingly, it appears that the past interpretation of the term "securities" by this Commission to include stocks, bonds, notesn and instruments that read like notes was essentially the fair and correct interpretation of section 20a of the act. 340 I.C.C. 817, 824 (1972).

Later in 1972, we reopened *Ex Parte No. 275* on our own motion and again proposed an expanded definition of the term "securities." An expanded definition was adopted on August 19, 1973, 344 I.C.C. 114, when we ordered, "That the term securities as found in section 20a of the Interstate Commerce Act be *henceforth* interpreted as including, among other things, *** advances."
344 I.C.C. 114, 146. This order has never become effective, having been stayed on September 18, 1973, pending disposition of a substantial number of petitions for reconsideration. We made the following reference to advances to our 1973 report:

> Another type of transaction thus far not subjected to our "securities" jurisdiction is the advance between a carrier and another member of the same corporate family. These advancesn whether to or from affiliate or subsidiary companies, are effectuated through transfers of cash or property (which have included securities of noncarrier corporations), and are generally evidenced only by an accounting entry, but may be evidenced by a note or other writing. 344 I.C.C. 114, 119.

We believe it is clear from the foregoing quotation from our decisions and the decisions themselves that, during the period when the advances in question were outstanding, 1929-1959, the Commission had consistently interpreted section 20a as not being applicable to advances. In fact, applicability of section 20a to the sinking fund arrangements was raised by REA with the Commission's Director of Finance in connection with the 1938 financing, and the Director advised REA that authorization under section 20a was not required. While we currently have pending a proceeding which may subject advances to the requirements of section 20a, any possible requirement to this effect would not be retroactive.

While advances, as such, may not come within the purview of section 20a it may be contended, as REA does, that certain of the

writings made in connection with the advances had sufficient attributes of a security to constitute such writing an "evidence of indebtedness" as referred to in the Act. First, it must be recognized that even rudimentary accounting would require written notation to be made of any advance, as we pointed out in the last quotation above. As a matter of business practice, some evidence of the existence and amount of advances has ordinarily been recorded and made known to the other party. We have not in the past attempted to bring advances within 20a on the basis of such documentation of the obligation. Secondly, in order to come within the requirements of section 20a during the period the Non-Negotiable Debt was outstanding, the relevant writings would have to be "stocks, bonds, notes, (or) instrument that read like notes ***," as stated in our 1972 report above. Our attitude during the revelant period is exemplified by the following quotation from our 1939 decision in *Lehigh Valley R. Co. Conditional Sale Contract,*

*** It may be admitted that a contract of sale which contains provisions for payment is in a board sense of the term, an evidence of indebtedness. So, also, is a check or memorandum invoice accepted by a carrier, but it will hardly be contended that the evidences of indebtedness last mentioned are securities within the meaning of section 20a(2). 233 I.C.C. 359, 365-6.

We also stated in the *Lehigh Valley* report that, "the provisions (of section 20a) were intended to apply to instruments negotiable or quasi-negotiable in character ***." 233 I.C.C. 359, 365. While we may be inclined to take a somewhat different view today, "since there have been major changes the type of financing methods utilized by carriers since the passage of section 20a ***." 340 I.C.C. 817, 818 (1972), we feel that the standards of *Lehigh Valley* are applicable to the advances and the Non-Negotiable Debt. Among the instruments cited by REA as constituting a "security," such as Mr. Lutz's letters, the accounting entries, the monthly "advices," and the statements or vouchers, none has sufficient attributes of a security to constitute an "evidence of indebtedness" within the meaning of section 20a of the Act. Furthermore, most, if not all of these writings, would ordinarily arise in connection with advances, a financing device considered to be beyond the reach of section 20a at the time the Non-Negotiable Debt was outstanding.

We are unable to share REA's assumption that a sinister motive was responsible for the railroads' expressed desire to structure the advances and the Non-Negotiable Debt in such a manner as to avoid the need for an application under section 20a. As long as unlawful

acts are not being committed, it is a legitimate business purpose to arrange one's affairs to minimize regulation. We are equally unsympathetic to REA's speculation that the railroads' wish to avoid filing under section 20a arose from a fear of denial by the Commission. REA asks in its brief, "Would the Commission approve a scheme which could not be repaid under the circumstances then existing?" In fact, such a "scheme" was "approved," at least inferentially, when authorization was granted for the issuance of the 1938 notes with a sinking fund financed by advances which could not be repaid under the circumstances then existing.

II. The Antitrust Issues

As was stated above under "The REA Lawsuit," our initial concern with the REA litigation related solely to the nature of the Non-Negotiable Debt. However, during the course of the court's consideration of our request to stay its proceeding, we offered to explore the effect of our orders on the antitrust questions raised in the REA lawsuit. The 3-judge district court agreed to a stay, "on the assumption that (the Commission) will entertain all the proposals outlined in its memorandum ***." These included "whether as stated in (the Commission's) memorandum of November 17, 1972, 'the 1959 order, or indeed prior orders, did exempt the 1959 notes and the non-negotiable debt from the requirements of the antitrust laws' and, more specifically, whether the notes were approved in furtherance of a section 5 transaction approved by the Commission.' "

4. Did the 1959 order or prior orders exempt the 1959 notes or the non-negotiable debt from the requirements of the antitrust laws?

5. Are there findings that should now be made by this Commission that would retroactively exempt the railroads from the requirements of the antitrust laws?

The antitrust issues with which we are concerned arise from the allegation by REA that section 10 of the Clayton Antitrust Act was violated through the creation and repayment of the Non-Negotiable Debt and the issuance of the 1959 notes without competitive bidding. (In an amended complaint, REA was alleged other violations of the antitrust laws, including conspiracy and price-fixing in contravention of the Sherman Antitrust Act. However, only the Clayton Act allegations were considered by Judge Metzner in his opinion and we believe no useful purpose would be served by our covering a broader range of issues.) Section 10 requires competitive

bidding when a common carrier has "any dealings in securities, supplies or other articles of commerce" with another corporation which has one or more directors in common with the carrier. There were a number of directors serving both REA and a railroad during this period. The railroads' defense to these antitrust charges rests initially on section 5(11) of the Interstate Commerce Act which contains an exemption from the antitrust laws for certain actions performed in connection with a transaction approved by the Commission under section 5. Specifically, section 5(11) states, in part:

*** any carriers or other corporations, and employees and any other persons, participating in a transaction approved or authorized under the provisiors of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or proposed by the Commission ***

The Commission's power under section 5(11) to confer exemption from the operation of the Clayton Act by its approval of transactions under section 5 has been confirmed by the United States Supreme Court. See *Minneapolis & St. Louis Ry.* v. *United States*, 361 U.S. 173 (1959). Nov 12, 27-28, 1959 Term.

The railroads' reliance on section 5(11) is based on Commission approval of the railroads' establishment and operation of REA pursuant to sections 5(1) and 5(2) of the Act. The Commission initially approved the railroads' ownership and control of REA under section 5(2) in 1929 and approved or examined under section 5(1) the standard express operating agreements between REA and the railroads in 1929, 1938, 1950, 1951, 1953, and 1959. The railroads contend that these actions by the Commission under section 5 operate to "relieve (them) from the operation of the antitrust laws." The railroads also contend that the regulatory authority of the Commission over REA and the railroads is so "comprehensive and pervasive," and such authority having been exercised "with respect to a relationship," that the antitrust laws may be preempted from application to that relationship. They cite *Hughes Tool Co.* v. *Trans World Airlines*, 409 U.S. 363 (1973), for the proposition that "close regulatory supervision under a broad statutory mandate serves to displace the antitrust laws."

A. THE 1959 NOTES

The 3-judge district court described its conception of the Commission's intention in this reopening as one of considering whether our orders had the effect of exempting the 1959 notes or the Non-Negotiable Debt from the antitrust laws, "and, more specifically, 'whether the notes were approved in furtherance of a section 5 transaction approved by the Commission.' " The court thus emphasizes the question of the status under the antitrust laws of the 1959 notes, as opposed to the Non-Negotiable Debt. We also feel that the status of the 1959 notes is more appropriate for our consideration and will treat this question first.

To summarize again the relevant background of the 1959 notes, an application was filed by REA and the railroads on July 23, 1959, for approval of the pooling of traffic and earnings under section 5(1) of the Act. On August 18, 1959, a hearing was held on the application. On September 1, 1959, a second application, under section 20a of the Act, was filed for authority to issue the 1959 notes to evidence the Non-Negotiable Debt. The pooling application under section 5(1) was approved on September 21, 1959, and the securities application under section 20a was approved on September 25, 1959.

In his opinion in the REA Lawsuit, Judge Metzner succinctly sets forth REA's contentions, the law and his conclusions on this point:

> The order of September 25, 1959, approving the notes *** expressly authorized REA to issue notes to its 66 creditor railroads in exchange for the Non-Negotiable Debt and held that this was "necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier ***." This is clearly a ruling by the Commission that the 1959 notes could be issued to specified companies without competitive bidding and that issuance of the notes was necessary to the joint venture approved initially in 1929.
>
> REA argues that the 1959 order cannot be interpreted as granting an antitrust exemption for the notes because the order was issued pursuant to §20a, under which the Commission had no authority to grant such an exemption. It is true that §20a does not confer power to grant immunity from the anti-trust laws. *Denver & Rio Grande Western Railroad Co.* v. *United States*, 387 U.S. 485, 496-497, 87 S. Ct. 1754, 18 L. Ed. 2d 905 (1967). However, when securities are issued in conjunction with activity which has been approved under §5 of the Act and the ICC specifically finds the issuance necessary to carry out the approved activity, the issuance will share the latter's immunization. *Denver & Rio Grande Western Railroad Co.* v. *United States*, *supra* at 497, 87 S. Ct. 1754; *Minneapolis & St. Louis Railway Co.* v. *United States*, *supra* ***, 343 F. Supp. 851, 859.

We agree with Judge Metzner's conclusion that our two 1959 orders operated to confer on the 1959 notes the exemption from the

antitrust laws provided by section 5(11). Judge Metzner was not, of course, passing on the correctness of our action, but the legal effect of our orders. After reconsideration of our 1959 orders and their antitrust effect on the 1959 notes, we are satisfied that the orders were correctly issued. We have no difficulty in concluding that "the notes were approved in furtherance of a section 5 transaction approved by the Commission," to quote the question of the 3-judge district court. REA's challenge to this conclusion is essentailly based on the fact that the order approving the section 5 transaction did not refer to the notes, nor did the order authorizing the notes refer to the section 5 transaction. However, both applications were before this Commission for our consideration at the same time and the orders were issued within four days of each other. It is not conceivable that each application would have been treated in isolation from the other. This is particularly evident when we consider that a central purpose of the far-reaching 1959 changes in the REA-railroad arrangements was to pave the way for REA to become independent of the railroads and a necessary step toward this goal was the formalizing of REA's financial commitments. Any doubts we might have as to (1) the connection between the section 5 transaction and the notes, and (2) our consideration of this connection, are resolved by the testimony of the president of REA at the Commission hearing on August 18, 1959, which is quoted above. In describing the plan for continued operation of REA, he testified that included within this plan was the issuance of notes to evidence the Non-Negotiable Debt. He stated that the application for authority to issue these notes would be filed "in two or three days." Based on the foregoing, we conclude that our order of September 21, 1959, approving a transaction under section 5, exempted the 1959 notes from the requirements of the antitrust laws. Our conclusion on this question is not altered by REA's numerous allegations of misrepresentations and omissions in the application which we find to be without any substantial basis.

B. The Non-Negotiable Debt

Before discussing the Non-Negotiable Debt, we will briefly refer to the question in our order reopening this proceeding which asked whether we should make findings retroactively exempting the railroads from the antitrust laws. For varying reasons discussed below, the parties contend we cannot (or need not) make such findings. We believe we should not, for reasons also discussed below.

The remaining question to be considered is the status under the antitrust laws of the Non-Negotiable Debt, i.e., did our 1959 order or prior orders exempt the Non-Negotiable Debt from the requirements of the antitrust laws? It appears unlikely that either 1959 order could confer any antitrust immunity on the Non-Negotiable Debt since that debt was extinguished through the issuance of the 1959 notes. Accordingly, any exemption would arise from our earlier orders, with the 1929 order under section 5(2) the most likely candidate. Thus, our 1959 orders are not directly involved in this question. For this reason, and for several others enumerated below, we are not reaching any conclusions herein with respect to the status under the antitrust laws of the Non-Negotiable Debt.

In summary, our reasons for not wishing to add our views to the others expressed on this question are as follows; (1) initially, the sole purpose of our reopening this proceeding and requesting a stay of the court proceeding was to determine whether, because of the "debt-equity" question, our order of September 25, 1959, "was correctly or appropriately issued," and the antitrust issues appear to have been inserted almost as an afterthought; (2) the 3-judge district court has expressed strong reservations as to our power take any meaningful action in this area; and (3) the parties involved, the railroads and REA, both declare that the proper forum for the resolution of antitrust issues is in the courts.

In the presentation of the Office of General Counsel to the Commission and our initial request for a stay of the court proceedings, the sole question involved was the wisdom of our September 25, 1959, order approving the issuance of notes by REA. The wisdom of that order was challenged on the basis of the possible lack of consideration for the notes. We have concluded that there was adequate consideration for the 1959 notes, that the Non-Negotiable Debt constituted debt and not equity, and, therefore, that the September 25, 1959, order was "correctly" and "appropriately" issued. In our review of the antitrust ramifications of our September 25, 1959, order, we again found no reason change or rectify our order. We did reach certain conclusions as the the antitrust aspects of our orders respecting the 1959 notes, and our reluctance to similarly rule on the Non-Negotiable Debt may appear inconsistent. However, we are committed to the 3-judge district court to comment specifically on the antitrust aspects of the 1959 notes, which were, of course, issued pursuant to the critical September 25, 1959, order. Naturally, we have honored this

commitment. A central purpose of our participation herein is to assist the court in its resolution of the REA Lawsuit. We do not believe that our ruling on the status of the Non-Negotiable Debt under the antitrust law will assist the court, but may, in fact, raise additional issues to complicate further and delay the REA Lawsuit. To assist the court in making its resolution of the status under the antitrust law of the Non-Negotiable Debt, we have attempted to lay the foundation for such a resolution by setting forth the relevant facts, some of which are discussed below.

We are also influenced in our decision not to rule on the status under the antitrust laws of the Non-Negotiable Debt by the reservations expressed by the 3-judge district court in its memorandum:

> The defendant railroads and, in respect to the suggestion concerning antitrust immunity, the United States contend that the Commission is without power to reconsider, clarify, revise or supplement its orders after so many years. We agree that its right to do so is by no means plain. See Davis, Administrative Law Treatise §18.09 (1958 ed & 1970) Supp.) However, we see no reason to pass on the Commission's powers until we know, as neither we nor it now can know, namely, what it desires to do. It should be clear that in allowing this, we are making no decision on what the Commission may lawfully do.

The section of the *Davis* treatise cited by the court discusses the limitations that the doctrine of *res judicata* may impose on the power of an administrative agency to reopen and reconsider its decision. While it is clear that past errors may be corrected, the Commission has been prevented from reversing a prior decision solely for the purpose of applying a new policy retroactively. *Upjohn Co.* v. *Pennsylvania R. Co.*, 381 F. 2d 4 (6th Cir. 1967), cited in the 1970 Supplement of *Davis* at p. 620.

In view of the broad sweep of section 5(9) of the Act, which provides that the Commission "may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary and appropriate," we question the objections to our power to modify our prior orders, including the 1929 order under section 5(1) and 5(2). However, we believe we should avoid the insertion in this proceeding of additional issues unless a clear need is shown. Such a need is not apparent to us.

While the court merely questions the priority of our exploring of the antitrust questions surrounding the Non-Negotiable Debt, the parties are firm (and united) in their belief that we should avoid

taking any formal action in this area. REA states in its brief, at p. 134:

> As a practical matter, only the district court can decide the antitrust issues herein. Only it is equipped to make a proper determination of whether REA's antitrust claims have merit, the extent of damages, if any, and whzher such claims survive REA's change in ownership. The seriousness of its financial plight requires that REA reiterate its request that the court be permitted to make these determinations without further ado.

REA is also understandably opposed to our taking any action to retroactively exempt the railroads from the antitrust laws.

As indicated above, even the railroads do not believe we have the authority to confer retroactive antitrust immunity upon them. Of course, they maintain they do not need it. In support of their argument that it is not appropriate for us to declare that our orders exempted the Non-Negotiable Debt from the antitrust laws, the railroads include a quotation from our decision in *Chicago, St. P., M. & O. Ry. Co. Lease*, 295 I.C.C. 696 (1958), which comes quite close to expressing our position on the question at hand. We then said that we found nothing in section 5:

> *** which authorizes us to determine and declare the particular laws within the scope of paragraph (11) from which a carrier shall be relieved. The terms of this paragraph are self-executing, and there is no need for this Commission expressly to order or declare that a carrier be relieved from certain restraints. It is sufficient if we make clear what the carrier is authorized to do. *** 295 I.C.C. 696, 702.

The railroads go on to state, "Similarly, we believe that the scope of the antitrust immunity afforded by 5(11) is for the courts."

While we might question the foregoing blanket assertion if applied to another case, we do not quarrel with the railroads' other contention that "the question whether extensive regulation and power to regulate has effected a preemption of the antitrust laws is one for ultimate determination by the court." As stated earlier in this section, the railroad rely on the Supreme Court's 1973 decision in the *Hughes Tool* case as authority for the proposition that our regulation of the relationship between the railroads and REA was so pervasive as to preempt the operation of the antitrust laws as applied to the challenged transactions. We are sympathetic to this reasoning as applied herein, but do not believe that it would be appropriate for us to make the determination that the *Hughes Tool* case is governing.

Another recent Supreme Court decision would appear to favor the railroads in the ultimate disposition of this matter. In a proceeding with certain similarities to the instant one, *Bangor Punta Operations, Inc.* v. *Bangor and Aroostock Railroad Company,* 417 U.S. 703 (1974), the purchaser at a fair price of more than 99% of the outstanding shares of Bangor and Aroostock Railroad Company was barred from a "windfall" recovery from the former owners for alleged acts of corporate mismanagement occuring long before the purchase. We believe that the determination whether the *Bagor Punta* case bars recovery even if the antitrust laws were violated should be made in the forum which decides the extent of recovery, i.e., the courts.

While the railroads seek to discourage us from making any "retroactive" finding on antitrust immunity, they feel differently about a Commission "restatement or clarification" of our prior conduct in connection with the subject transactions. In support of this suggestion, they refer to our action in 1950-51 when we reopened and gave further consideration to the proceeding involving the uniform operating agreements between REA and the railroads following a court challenge by the United States on antitrust grounds. See *United States* v. *Railway Express Agency, Inc.,* 101 F. Supp. 1008 (D. Del. 1951); *Express Contract, 1929,* 275 I.C.C. 739 (1951). The United States had challenged the provision of the operating agreements appointing REA the exclusive agent of each rail carrier for the conduct of express transportation business on its line during the term of the agreement. Upon application by REA, we reopened the proceeding and, after due consideration, found that the exclusive agency provisions were "a necessary and essential ingredient" of the contract for pooling of traffic and service which we had approved pursuant to section 5(1) and that "such pooling is in the interests of vetter service to the public and of economy in operation, and will not unduly restrain competition." 275 I.C.C. 739, 745. On the basis of this "express approval" by the Commission, the district court found the actions of REA to be "relieved from the operation of the anti-trust legislation," and dismissed the proceeding. 101 F. Supp. 1008, 1018.

We agree that there is a substantial resemblance between our action in 1951 in re-examining the 1929 agreements and the instant proceeding in which we have an opportunity to review the events of 1929 to determine the status of the Non-Negotiable Debt under the antitrust laws. It is precisely this similarity that permits us to focus on the reasons why we are declining to make such a determination

with respect to the Non-Negotiable Debt. While the questions presented in 1951 and today have many parallels, the significant differences are two-fold. The exclusive agency provision had clearly been considered and "approved" by us in 1929, although such approval was not so clearly expressed, and, secondly, the exclusive agency provision was patently "necessary" to the pooling provisions approved under section 5(1) in 1929. Accordingly, the explicity standards of section 5(11) for relief from the antitrust laws were met, and we were simply pointing this out more forcefully in 1951.

We are not presented with the same situation regarding the Non-Negotiable Debt. At the time of our section 5 order in 1929, the Non-Negotiable Debt could not be approved since the concept does not appear to have been then clearly formulated. At best, it was an alternative method for handling the sinking fund obligations, of which alternative we were aware. We specifically stated in our order that we were not passing on the sinking fund provisions. Therefore, there could be no "approval" of the Non-Negotiable Debt in 1929, nor could the Non-Negotiable Debt be said to be "necessary" for our approval of the pooling provisions. Thus, the literal terms of section 5(11) are not satisfied, as in the case of the 1951 proceeding.

In light of the foregoing, it may be contended that our duty lies in finding that section 5(11) provides no protection for the Non-Negotiable Debt. However, we are not convinced that the relief from the operation of the antitrust laws provided by section 5(11) may not be available to the railroads in connection with the Non-Negotiable Debt. REA's antitrust contentions are essentially that the railroad stockholders did not use competitive bidding in their debt transactions with REA, and were obliged to deal independently and competivively with one another in determining the price of their credit to REA. The railroads make a persuasive argument that our approval of the railroads' control of REA under section 5(2), which established REA as, in effect, an agency or instrumentality of the railroads with interlocking directors, with no terms or conditions imposed by us on the railroads' exercise of control of REA, and with our knowledge of the sinking fund, makes the "relief" provisions of section 5(11) applicable to the Non-Negotiable Debt.

In addition to the railroads' argument based on our section 5(2) approval in 1929, we find of assistance the concurring opinion of Judge Friendly in *Klinger* v. *Baltimore & Ohio Railroad Co.*, 432 F. 2d 506 (2 Cir. 1970). When we consider the application of section 10 of the Clayton Antitrust Act to the Non-Negotiable Debt in 1929, we find his observation in the *Klinger* case apposite: "Congress

meant to require competitive bidding when that would serve a useful purpose, not to demand a mere formality." 432 F. 2d 506, 518. While we offer these observations on the merits of the antitrust status of the Non-Negotiable Debt, we are not prepared to make formal findings for the reasons we have set forth above. We would, of course, make such findings if we believed that our action would help, and not hinder, the district court in concluding *its* proceeding, the REA Lawsuit. Similarly, we would be pleased to make such findings if the district court were to specifically so direct us. However, we read its memorandum staying the court proceeding as a reluctant acquiescence in our request, permitting us to make such determinations as we wish, rather than any direction to resolve the issues of the REA Lawsuit.

We have reviewed all evidence and arguments not mentioned in this report and find much of it beyond the scope of this reopening, particularly the matter relating to post-1959 events, and the remainder not sufficiently material to be discussed herein.

We conclude that our September 25, 1959, order was correctly and appropriately issued. In light of our discussion above, we believe that no further findings or conclusions are appropriate or necessary.

APPENDIX A

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D.C., on the 25th day of September, A. D. 1959.

FINANCE DOCKET NO. 20812

RAILWAY EXPRESS AGENCY, INCORPORATED, NOTES

It appearing, That the Railway Express Agency, Incorporated, of New York, N.Y., by an application filed on September 1, 1959, applied for authority under section 20a of the Interstate Commerce Act to issue 5-percent nonnegotiable promissory notes in the total principal amount of $27,637,053.80, and that no objection to the application has been offered;

It further appearing, That the applicant is indebted in the amount of $27,637,053.80 to 66 of its controlling railroad companies named in the application for funds advanced to it on open account to pay the principal amount due on the bonds and notes issued by it under authority granted in *Securities and Acquisition of Control of Ry. Exp. Agency, Inc., Notes*, 230 I.C.C. 478, decided December 20, 1938, respectively, and that this indetedness bears interest at the rate of 4 percent per annum;

It further appearing, That, in order to evidence the above-described open-account indebtedness, the applicant proposes to issue to the said 66 railroad companies nonnegotiable promissory notes in the total principal amount equal to the amount owed to each carrier as shown in the application, will be dated October 1, 1959, will bear interest on the unpaid principal amount thereof at the rate of 5 percent per annum, payable semiannually on April 1 and October 1, and will be payable December 31, 1973; the notes will have the benefit of a sinking fund into which applicant will agree to pay on May 1, 1965, and on May 1 of each year thereafter to and including the year 1973, an amount equal to 10 percent of its net income for the next preceding calendar year, such net income to be that remaining after provision for payment of all expenses and taxes, and distributions, if any, to carriers by railroad under Article 10, section 2 (f) of the Standard Express Operations Agreement effective October 1, 1959; said notes will be prepayable in whole or in part without premium, provided, however, that each such principal payment shall, unless made from the above-described sinking fund, be paid pro rata to all holders of such notes and shall be made in a total sum of not less than $500,000; said notes will contain a provision that no dividends will be declared or paid on applicant's capital stock so long as any of the notes are outstanding, and they will be subordinate to the obligations of the applicant to Morgan Guaranty Trust Company of New York and to The New York Trust Company, agent, represented by notes issued by applicant under authority granted in Finance Dockets Nos. 18674, 18774, 18984, 19961, and 20264;

It is ordered, and the said division so finds, that the proposed issue by Railway Express Agency, Incorporated, of 5-percent nonnegotiable promissory notes in a total principal amount not exceeding $27,637,053.80, as aforesaid, (a) is for a lawful object within its corporate purposes and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose:

It is ordered, That the Railway Express Agency, Incorporated, be, and it is hereby, authorized to issue to 66 of its controlling railroad companies named in the application nonegotiable 5-percent promissory notes in a total principal amount not exceeding $27,637,053.80; said notes to be issued upon the terms and conditions and for the purposes hereinbefore described;

It is further ordered, That, except as herein authorized, said notes shall not be sold, pledged, repledged, or otherwise disposed by the applicant unless or until so ordered or approved by this Commission;

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the order of the Commission, by division 4, dated August 9, 1946, as amended, respecting applications filed under section 20a of the Interstate Commerce Act (49 CFR 56.4 and 56.6); and

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said notes, or interest thereon, on the part of the United States.

By the Commission, division 4.

(SEAL)

HAROLD D. MCCOY,
Secretary.

348 I.C.C.

APPENDIX B

71 Civ. 4278

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REA EXPRESS, INC.,

Plaintiff,

v.

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, et al., and THE UNITED STATES OF AMERICA,

Defendants.

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Before FRIENDLY, Chief Jude of the Second Circuit, KNAPP and GRIESA, District Judges.

MEMORANDUM AND ORDER

PER CURIAM:

Since Courts III and VII of the second complaint contain allegations which can be reas as calling in question the validityof an order of the Interstate Commerce Commission, the motion of the Commission for leave to intervene as a party defendant and to appear with like effect as if named as an original party defendant is granted, 28 U.S.C. §2323, to the extent that the Commission may appear with like effect as the United States.

The Commission has also moved, in line with a vote taken on August 10, 1972, to stay all further proceedings herein "pending the Commission's reconsideration of its order of September 25, 1959" in F.D. No. 20812, *Railway Express Agency, Inc., Notes*. While this motion had been stricken from the list of otions to be argued on December 19, the Commission appealed from that ruling of the single judge and argument was in fact heard. The Commission states, in a memorandum of September 5, 1972 in support of its motion, that "[o]n reconsideration the Commission will entertain whatever facts and arguments the parties desire to bring to its attention regarding the 1959 order." We read this as meaning what it says, namely, that reconsideration will be given not only to the suggestion, advanced in the Commission's memorandum, that the non-negotiable debt perhaps "in fact represented but railroad equity in REA," which has aroused understandable concern on the part of the railroad defendants, but also whether, in the Commission's words, "the 1959 order was correctly or appropriately issued" on the contrary assumption and, in addition, whether as stated in its emorandum of November 17, 1959 notes and the non-negotiable debt from the requirements of the antitrust laws" and, more

specifically, "whether the notes were approved in furtherance of a section 5 transaction approved by the Commission." Our action on the Commission's motion is predicated on the assumption that it will entertain all the proposals outlined in its memoranda and, indeed, any others that may be appropriate.

The defendant railroads and, in respect to the suggestion concerning antitrust immunity, the United States contend that the Commission is without power to reconsider, clarify, revise or supplement its orders after so many years. We agree that its right to do so is by no means plain. See Davis, Administrative Law Treatise §18.09 (1958 ed. & 1970 Supp.). However, we see no reason to pass on the Commission's powers until we know, as neither we nor it now can know, namely, what it desires to do. Moreover, the parties seem to agree that, even if we should deny the Commission's motion for a stay, it might very well proceed with a reconsideration, whether lawfully or unlawfully, either while this action is pending (although perhaps we could enjoin that if we deemed that course to be proper), or after its conclusion. Economy of administrative and judicial time will be furthered by allowing the Commission to engage now in whatever reconsideration, clarification, revision, or supplementation it considers to be proper and lawful. Such action might also lead to further amendment of the pleadings, which may cast the problem of three-judge court jurisdiction in a new light. It should be clear that in allowing this, we are making no decision on what the Commission may lawfully do.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 9th day of January 1973.

FINANCE DOCKET NO. 20812

RAILWAY EXPRESS AGENCY, INC., NOTES

It appearing, That by order of September 25, 1959, as amended, this Commission authorized the issuance of promissory notes by the Railway Express Agency, Inc., to a number of railroads in the amount of $27,637,053.70; the notes were to be issued in exchange for certain "non-negotiable debt" on the express company's books in the same face amount;

It further appearing, That on September 30, 1971, REA Express, Inc., as successor to the above-named company, commenced an action in the United States District Court for the Southern District of New York entitled *REA Express, Inc.* v. *The Alabama Great Southern Railroad Company, et al.*, 71 Div. 4278, alleging that the railroad companies, which had until 1968 or 1969 exercised voting control over REA, *inter alia*, (1) violated section 10 of the Clayton Act, such as for example in creating the non-negotiable devt, (2) violated section 20a of the Interstate Commerce Act by causing the issuance of a security by REA without approval of the Commission, and thereafter voided the 1959 notes under section 20a(11) by terminating the standard operating agreement, (3) caused the issuance of the 1959 notes which are void for lack of consideration, (4) voided the 1959 notes by breaching an implied covenant to retain the standard operating agreement in force, (5) breached fiduciary obligations to REA, (6) engaged in price fixing in violation of section 1 of the Sherman Act, 15 U.S.C. 1, and (7) violated section 10 of the Clayton Act by issuing the 1959 notes without competitive bidding;

It further appearing, That upon being advised of the pendency of the aforesaid suit, the questions that had been raised concerning our authorization of REA in 1959 to issue promissory notes to its railroad parents and the course of events extnding back to 1929 which had led to that authorization, and the decision of District Judge Metzner of June 5, 1972 (343 F. Supp. 851), we voted on August 10, 1972, to reopen the above-entitled proceeding for reconsideration, but to enter no order until the Court had been apprised of our vote and had been given an opportunity to entertain a motion to defer further proceedings;

It further appearing, That on December 20, 1972, a Three-Judge District Court, composed of Cicuit Judge Friendly and District Judges Knapp and Griesa, enter an order granting motions made by this Commission to intervene in the court proceeding and to stay further court proceedings on the merits of REA's complaint;

It further appearing, That the District Court's stay is conditioned upon our proceeding with expedition in view of the fact that the notes in issue mature on December 31, 1973; and hence the stay will expire on May 1, 1973, unless by motion made not later than April 13, 1973, the Commission shall show good cause for an extension; accordingly;

It is ordered, That this proceeding is hereby reopened for reconsideration, and such hearing as the need therefor may appear;

It is further ordered, That REA Express, Inc., and the railroads and their assignees listed in the appendix hereto are hereby made parties to this reopened proceeding;

It is further ordered, That REA Express, Inc., and the parties set forth in the appendix hereto, shall file with the Commission a verified original and 15 copies of each of the affidavits bearing on the merits of REA's complaint, which they have already filed in the district court, on or before the expiration of 20 days from the entry of this order;

It is further ordered, That the parties to this reopened proceeding shall on or before the expiration of 30 days from the entry of this order file an original and 15 copies of briefs, verified statements of facts, and proposed findings and conclusions, relating to whatever matters the parties shall desire the Commission to consider or decide in this reopened proceeding; the parties shall, without limiting the matters that may be raised, address themselves to the substance of the following issues and the Commission's authority in the matter:

1. Did the non-negotiable debt represent the build-up of railroad equity in REA by its railroad parents?
2. Did REA's repayment of that debt or interest thereon represent a return of on equity capital?
3. If the answer to number 1 or 2 is "yes," what legal and practical consequences should flow from that finding?
4. Did the 1959 order or the non-negotiable debt from the requirements of the antitrust laws?
5. Are there findings that should now be made by this Commission that would retroactively exempt the railroads from the requirements of the antitrust laws?

It is further ordered, That the parties hereto may on or before the expiration of 50 days from the date of this order file reply briefs, verified statements of facts, and proposed findings and conclusions in response to the initial briefs and other papers filed herein;

It is further ordered, That any party requesting oral hearing shall set forth with specificity in his initial or reply brief the need therefor and the evidence to be adduced;

And it is further ordered, That copies of this order shall be mailed to Railway Express, Inc., to the parties named in the appendix, to the governors of each of the contiguous States, and upon the Attorney General of the United States; and that a copy of this order be delivered to the Director, Dibision of Federal Register, for publication in the Federal Register.

By the Commission.

(SEAL)

ROBERT L. OSWALD,
Secretary.

APPENDIX

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
THE BALTIMORE & OHIO RAILROAD COMPANY
BANGOR & AROOSTOCK RAILRAOD COMPANY
BOSTON & MAINE RAILROAD
BURLINGTON NORTHERN, INC.
CANADIAN NATIONAL RAILWAY CO.
CENTRAL OF GEORGIA RAILWAY COMPANY
CENTRAL RAILROAD CO. OF NEW JERSEY
THE CHESAPEAKE & OHIO RAILWAY COMPANY
CHICAGO & EASTERN ILLINOIS RAILWAY CO.
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY
CHICAGO & NORTHWESTERN RAILWAY CO.
CHICAGO ROCK ISLAND AND PACIFIC R.R. CO.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO.
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY
CLINCHFIELD RAILROAD COMPANY
THE COLORADO & SOUTHERN RAILWAY COMPANY
THE DELAWARE & HUDSON RAILROAD COMPANY
THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY
ERIE LACKAWANNA RAILWAY CO.
FLORIDA EAST COAST RAILWAY CO.
FORT WORTH & DENVER RAILWAY COMPANY
GULF MOBILE & OHIO RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD CO.
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
LAKE SUPERIOR & ISHPEMING RAILRAOD COMPANY
LEHIGH VALLEY RAILROAD CO.
LOUISVILLE & NASHVILLE RAILROAD COMPANY
MAINE CENTRAL RAILROAD COMPANY
THE MICHIGAN CENTRAL RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD CO.
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY
NORFOLK AND WESTERN RAILWAY COMPANY

PENN CENTRAL TRANSPORTATION CO.
READING COMPANY
RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY
ST. LOUIS-SAN FRANCISCO RAILWAY CO.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS
SEABOARD COAST LINE RAILROAD CO.
SOO LINE RAILROAD COMPANY
SOUTHERN PACIFIC TRANSPORTATION COMPANY
SOUTHERN RAILWAY COMPANY
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
THE TEXAS & PACIFIC RAILWAY CO.
UNION PACIFIC RAILROAD CO.
THE WESTERN RAILWAY OF ALABLAMA
WESTERN MARYLAND RAILWAY CO.
BANKERS TRUST COMPANY (Pitt & Co. and Salkeld & Co.), as assignee of Maine Central Railroad Company and the New York, Susquehanna Western Railroad Company
PENNSYLVANIA COAL CO., as assignee of Delaware Lackawanna and Western Railroad Company and Erie Railroad Company
UNITED STATES OF AMERICA, as assignee of the Central Railroad Co. of New Jersey

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 28th day of July 1975.

Finance Docket No. 20812

RAILWAY EXPRESS AGENCY, INC., NOTES

It appearing, That, by order of January 9, 1973, the Commission reopened this proceeding for reconsideration, and such hearing as the need therefor may appear; and

It further appearing, That the Commission, on the date hereof, has made and set forth its report in this proceeding setting forth its conclusions and findings and its reasons therefor, which report is hereby referred to and made a part hereof:

It is ordered, That the January 9, 1973 order of the Commission in this proceeding be, and it is hereby, vacated, and that these proceedings be, and they are hereby, discontinued.

And it is further ordered, That this order shall become effective 35 days from the date this order is served.

By the Commission.

ROBERT L. OSWALD,

(SEAL)

Secretary.

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SERVICE DATE

FEB 24 1976

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 11th day of day of February, 1976.

Finance Docket No. 20812

RAILWAY EXPRESS AGENCY, INC., NOTES

Upon consideration of the record in the above-entitled proceeding, including the report and order of the Commission, served August 29, 1975, vacating the order of January 9, 1973 reopening this proceeding of the petitions filed September 29, 1975, by REA Express, Inc. for reconsideration, further hearing and oral argument and of the reply thereto by certain railroad parties, filed October 20, 1975; and

It appearing, That REA Express, Inc. (REA) alleges, among other things, (1) that the non-negotiable debt or advances created between certain railroads and REA was improper because it was not provided for under the terms of the pooling agreement and was a security requiring Commission authorization under Section 20a of the Interstate Commerce Act; (2) that the promissory notes authorized in this proceeding by order of September 25,1959 (hereinafter the 1959 Notes) were improperly approved because the non-negotiable debt did not supply adequate consideration, and such notes and the attendant application did not fulfill the requirements of Section 20a; (3) that the issuance of the 1959 Notes was not in furtherance of the revision of the pooling agreement authorized by order of September 21, 1959 and was not immunized from the effect of the antitrust laws by Section 5(11) of the Act because of such authorization; and (4) that certain misstatements, comments and evidence in this proceeding and the Commission's report and order on further consideration, served August 29, 1975, have prejudiced REA's case and require additional evidentiary proceedings or oral argument;

It further appearing, That the non-negotiable debt, although not specifically authorized by the Commission's report and order of February 11, 1929, Securities and Acquisition of Control of Ry. Exp. Agency, 150 I.C.C. 423, approving the pooling agreement, was within the permissible bounds of the Commission authorization, that the Commission was fully informed that the outstanding bonded indebtedness might be retired in a manner other than that provided for in the pooling agreement, and that the character of the non-negotiable debt or advances was not such as to be a security within the meaning of Section 20a at the time of its creation;

It further appearing, That the application for the issuance of the 1959 Notes disclosed all facts insofar as they were material to such authorization, that on the basis of this record, the issuance of such notes was for a lawful object within REA's corporate purpose, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by REA service to the public as a common carrier, and which would not impair REA's ability to perform that service, and was reasonably necessary and appropriate for such purpose; and that, as the non-negotiable debt was a valid debt, adequate consideration existed for such notes;

Exhibit C

It further appearing, That, as the 1959 Notes were properly authorized pursuant to Section 20a, that approval and the Commission's approval in Express Contract, 1959, 308 I.C.C. 545 operated to confer on the 1959 Notes the exemption from the antitrust laws provided by Section 5(11) because the notes were approved in furtherance of a Section 5 transaction approved by the Commission, see Minneapolis & St. Louis Ry. v. United States, 361 U.S. 173, 190-191 (1959); and

It further appearing, That REA's allegations that the Commission misstated REA's position on the debt/equity question, that the improper introduction of expert testimony by certain railroad parties deprived REA of a right to rebuttal, that the official notice of certain Commission rate cases was improper because no opportunity was given to rebut the findings in those cases and that the National Transportation Policy requires the voiding of these notes are allegations not supported by law or the evidence of record;

It further appearing, That said petition for reconsideration sets forth no material facts or arguments in addition to those previously considered in this proceeding; that the conclusions and findings in the report and order of August 29, 1975 are adequately supported by the evidence of record; that there has been presented no errors of fact or law with respect to the matters complained of by REA Express, Inc. and that no showing has been made warranting reconsideration of said order; and

It further appearing, That in light of the above, no good cause has been shown why further hearings or oral argument are necessary;

It is ordered, That the petitions for reconsideration, further hearing and oral argument be, and they are, hereby denied, and

It is further ordered, That the order entered July 28, 1975, shall be effective 20 days from the date this order is served.

By the Commission.

(SEAL)

ROBERT L. OSWALD
Secretary

NOTE: This is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969.

[An identical petition to the foregoing was filed on April 8, 1976 in the United States Court of Appeals for the Second Circuit.]

[Page references in lower right hand corner are to pages in the Commission Index to the Record, filed in this Court on May 6, 1976.]

Finance Docket
No. 20812
REA Exhibit 62

Introductory Comments

Presentation of Oral Report on Termination Plan

RAILWAY EXPRESS AGENCY

Board Meeting

April 15, 1959

On February 16 we were retained to develop a plan of termination of operations for Railway Express Agency in accordance with the provisions of the standard operating agreement. We have done this and we are prepared to present this to you in outline form today.

We were also asked (1) to recommend any immediate steps that could be taken to effect cost reduction and (2) to examine the possibility that some segments of the business might be sold as going enterprises instead of being liquidated in accordance with the strict provisions of the operating agreement. Both of these have been done.

We updated our knowledge of the Agency by means of an intensive study of its operating practices under today's conditions. We interviewed many of its headquarters personnel and visited a number of its outlying operations. We worked closely and met frequently with the Liaison Committee of the Board which was appointed for that purpose. They have been very helpful. Full cooperation has been forthcoming.

Any plan for terminating a business has distressing implications, particularly when an activity of this magnitude is concerned; one which employs over 36,000 people and for whose services the public pays something over $300,000,000 a year.

We would not have carried out our professional obligations as management consultants to the owners of the Agency had we not, in the course of our work, given consideration to the obstacles that stand in the way of the Agency's successful operation as a going business. Our attention was drawn to many of these by the scrutiny of cost reduction opportunities and of the obstacles that lay in the way of achieving these economies.

You are probably aware that we have identified economy measures that would reduce operating costs about $22,000,000 annually without changing the basic method of operation and without significantly affecting the service rendered by the Agency. In comparision, and leaving aside arguments about the basis for its calculation, the alleged gap between privilege payments and railroad operating costs for providing line-haul services for express is of the order of $60,000,000. It seems reasonable to suppose that the narrowing or even elimination of this gap is not impossible, provided, and the study has shown this to be extremely

important, that the normal businessman's operating instincts are permitted to govern the management decisions made by the Agency's management.

On the other hand, we have staring us in the face the distinct possibility, if not probability, that contingent termination expenses, possibly as high as $700 or $800 million, face not only the stockholders but also the participating railroads in the event of termination. Because of this, and without the least desire to be humorous, the affairs of the Agency can be said to be in such shape that it is not in a proper position to die.

As we present the termination plan, we believe it will be helpful for you to have in your minds a brief objective appraisal of the conditions which we think have contributed to the Agency and its stockholders finding themselves in such an uncomfortable position.

Strangely, or perhaps not so strangely, the steps needed to put the Agency in a proper position to die appear in many instances to be the same required to give it a chance to live on a profit-making basis.

It is undoubtedly somewhat presumptuous of us to offer the observations which follow, particularly in view of the fact that we are keenly aware that such an appraisal was not the objective which you assigned to us. However, with this in mind we present them anyway for what we

hope will be your most thoughtful and urgent considerations. There is a lot at stake.

First, we have observed that the Agency, in its current form, lacks the principal motivations required for successful operation of a profit-making business.

(1) Since the Agency distributes what is left after expenses to the railroads, it in effect makes no profit--there is little economic incentive felt by the management for the Agency to reduce cost or conduct operations at their maximum efficiency. This is not to say that many constructive efforts have not been made, but the all-powerful fear of loss is not there.

(2) The management of the Agency lacks direction from a Board whose over-riding objective is to operate the Agency effectively and profitably. The Board, as it is currently constituted, is composed of representatives of the railroads, whose natural and primary interest tends to be the protection of the welfare of the railroads and not the protection of the interests of the Agency. This is aggravated by the fact that the railroads in the different regions have legitimately different problems and different interests.

(3) The enforcement of historical precedents for division of revenues, rate patterns, divisions of expense, routing of shipments, type of business accepted and geographical coverage of operations all mitigate against profitable operation of the express business. They prevent the inevitable pressure of economics and technology from affecting the size, shape, method and structure of the business. These pressures can be withstood for a while, if there's a Santa Claus somewhere, but ultimately they will overwhelm the Agency in its present form.

Under the circumstances, it seems to us that it is highly unlikely that the Agency can continue to operate in its present form. Some alternatives seem to be worthy of consideration in the present circumstances, even though they may previously have been rejected for what at the time may have been good reasons. Since then, extensions of super-highways, new forms of competition, better freight schedules, passenger schedule reductions and increased wage costs all raise questions as to whether the luxury of maintaining many of the restrictions can still be afforded. Some facets of the business which we believe deserve a fresh and penetrating examination are:

(1) Reconstitution of the Board to include public members and possibly airline representatives.

(2) Complete regionalization of the business including its operating administration and rate structure. Possibly this could be done by means of regional operating companies under a central holding company so that the benefit of the name and the common operating policies could be retained while permitting flexibility to meet regional needs.

(3) Seeking of additional outside capital and representation for it on the Board.

(4) Establishment of an arms-length relationship with the railroads which would permit the Agency to buy what space it needed and pay for it at standard rates. Minimization or elimination of Railway Express Agency acting as an agent of the railroads. This would tend to focus attention on the significance of line-haul charges in making management decisions on service and rates.

(5) Complete freedom of routing, including non-railroad, if more economical.

(6) A re-structuring of the rates to provide recognition of the differences between terminal and line-haul costs.

(7) Drastic simplification of the accounting practices for the division of revenues and expense if any element of this problem remains after other changes.

(8) Adoption of modern management incentive plans to stimulate effective operation.

(9) When economics or service dictate, divorcement of the express service from the passenger trains and terminals.

(10) An aggressive examination of the possibility of diversification by broadening the Agency's service.

Many of these ideas have long been held by various segments of Agency management. We believe that in the present circumstances they are worthy of fresh, thoughtful and urgent consideration, if the great assets that the Agency does have--its size, coverage and nationwide pickup and delivery service--are to be profitably exploited.

In the face of previous efforts to rearrange the contractual relationships by the railroads and the Agency these are radical proposals. However, it seems reasonably clear that failure to adopt all or most of these changes will lead inevitably to mounting losses on the part of many railroads and to the ultimate need for dissolution of the Agency in its present form with all attendant contingent liabilities.

It is of course true that even with the best intentions and the most radical changes, the results may not be supportable. However, as pointed out earlier, these same steps would put the Agency in much better shape to terminate. It might well be that this is the only practical way for the railroads to get into a position where they have a good possibility of avoiding the staggering burden of the contingent liabilities. This should be worth quite a few million dollars and a lot of management effort.

In summary, the following issues seem to be paramount.

(1) The present Board structure and relationships with the railroads are not conducive to profitable operation for the railroads as a whole or to satisfactorily meeting the competitive challenges of the future.

(2) The best long-term interests of the railroads are probably not served by the present working arrangements.

(3) Contingent liabilities upon termination present a major threat to the railroads. Political retaliation is very likely if an overt effort is made to avoid them.

(4) Rearrangement of contract terms and working relationships could probably, within a few years, insulate the railroads from Agency's contingent liabilities.

(5) Significant cost reductions can be made if new approaches are made.

(6) The Agency has great assets in its size, coverage and its pickup and delivery service.

Under the circumstances, it seems worthwhile to seriously consider a drastic and urgent revision of the standard operating agreement along the lines outlined above prior to coming to a firm decision to terminate operations. It may be possible, however, that the new agreements could best be reached if the present one was terminated. Operation, of course, should continue while the new contracts are negotiated, but many of the operating restrictions should be relaxed immediately by agreement.

We think this program is worth a lot of thought. Now we will present the termination plan and the considerations on which it is based.

BOOZ · ALLEN & HAMILTON Inc.
Management Consultants

NEW YORK WASHINGTON CLEVELAND
CHICAGO DALLAS LOS ANGELES SAN FRANCISCO
TORONTO MEXICO CITY SAO PAULO
LONDON PARIS DUSSELDORF

245 PARK AVENUE
NEW YORK · 10017
697-1900
AREA CODE 212

J.T.

OCT 17 1973

October 16, 1973

Mr. Arthur M. Wisehart
Senior Vice President
PEA Express
219 East 42nd Street
New York, New York 10017

Dear Art:

After an extensive search, we finally located the comments made by Charles Bowen preceding the presentation of our report to the REA Board on April 15, 1959.

I apologize for the delay in getting these comments to you, but we did have considerable difficulty in locating them.

If you would like to discuss these comments with Charlie, I'm sure we can set up a meeting.

Sincerely yours,

J. L. Lesher

BOOZ, ALLEN & HAMILTON Inc.

John L. Lesher
Senior Vice President

/lb
Attachment

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Finance Docket
No 20812
REA Exhibit 84

REA EXPRESS, INC.

PRINCIPAL ASPECTS OF EXPRESS HISTORY
(from 1839 to 1967)

Compiled by
Chester J. Jump

Company in 1955 and 1957 and made subject to accelerated write-off under authority of government agencies. Such accelerated depreciation accruals had reduced the depreciated book value of the cars by $6,059,463 below normal depreciated value.

Item 1 above included $6,876,883 for Land and Buildings on Land Owned by the Express Company:

Land at Cost	$4,083,089.
Buildings at cost less accrued depreciation	2,793,794.
	$6,876,883.

Unrecorded liabilities for which no accruals had been included in the accounts or for which reserves were inadequate were estimated to be:

		Unrecorded Liabilities
A.	Loss and damage in excess of frozen reserve of $429,047.	$3,198,175.
B.	Personal injuries in excess of frozen reserve of $477,320.	3,148,680.
C.	Vacations	3,482,248.
D.	Pensions based on service to Dec. 31, 1948	14,816,191.
	Total	$24,645,294.
	Additional pension liability based on service to Dec. 31, 1973	11,614,067.
		$36,259,361.

Note: By action of the Board of Directors, upon recommendation of the Accounting Committee (strongly opposed by Express Company Management) reserves for loss and damage and for personal injuries were frozen at inadequate levels as of October 1, 1939. Thereafter the Express Company's accounts were stated on a cash basis. There were no reserves for vacations nor for pensions. The Express Company had been on a strict cash basis as to such items.

21. EXPRESS COMPANY'S COMPREHENSIVE SURVEY OF EXPRESS OPERATIONS, PRACTICES AND METHODS - JANUARY 1959

President Hammell called together at headquarters in New York January 19, 1959, the Express Company's Vice Presidents, General Managers and other key officials. They met for more than two weeks developing ways and means of reducing expenses with a view of increasing Rail Transportation Revenue available for payment to the railroads.

Pursuant to prior understanding the president sent to Director Fred Carpi of the "Negotiating Committee" with letter dated February 6, 1959, 25 copies of the comprehensive report developed as a result of the meeting of key officials of the Express Company in January.

He wrote that everyone realized the seriousness of the situation and of the urgent need for drastic changes in methods and procedures. He stated that every suggestion, regardless of how radical it might have seemed, had had or would have consideration; that the only test was whether it could be shown that it would

Ascertainment Of Liabilities Of Each Carrier As Of December 31, 1959

After further discussion the Board of Directors, by unanimous vote, directed the president to proceed immediately with the ascertainment of the liabilities of each carrier signatory to the Standard Express Operations Agreement, as of December 31, 1959, in accordance with Section 5 of Article 17 of the 1954 Agreement.

By December 29, 1958, eleven days after the special meeting of the Board of Directors, the president of the Express Company had received unanimous consent of the railroads to the amendment extending to April 30, 1959, the date on or before which notices of withdrawal from the Express Agreement January 1, 1960, would be acceptable.

New York Central Notice Of Withdrawal As Of January 1, 1960

Meanwhile, however, on December 23, 1958, the Wall Street Journal telephoned the president of the Express Company advising of the receipt of a press release from New York Central announcing withdrawal from the Express Agreement January 1, 1960. Later that day (December 23, 1958) Mr. Nickerson personally delivered to President Hammell New York Central's withdrawal notice.

Although not the kind of message calculated to bring Christmas cheer to REA personnel, telegrams were sent December 24 to supervisory officials in charge of express offices throughout the country in order that they might have prompt word from headquarters concerning newspaper and other reports which might come to their attention.

20. FINANCIAL CONDITION OF THE EXPRESS COMPANY - 1958

In response to oral request the Vice President Administration and Finance furnished President Hammell with letter dated January 9, 1959, an analysis of the Express Company's General Balance Sheet as of October 31, 1958, as follows:

	As of Oct. 31, 1958
1. Net book value of property and equipment Ledger value (cost) less accrued depreciation, less also the amount of equipment obligations	$26,940,182.
2. Other investments (stocks, bonds mortgage)	1,049,535.
3. Current assets in excess of current liabilities	5,401,518.
	$33,391,235.
4. Deduct - Deferred Liabilities and unadjusted accounts	4,700,069.
5. Remainder, equal to stock ($99,900) plus advances by stockholders ($28,591,266)	$28,691,166.

It was suggested in the letter that in any sale of the Express Company's property an item warranting special consideration would be the depreciation accrued in respect of rolling stock -- refrigerator cars -- purchased by the Express

Railway Express Agency, Inc.

116(c)

Finance Docket
No 20312.
RMA Exhibit 65

May 6, 1959.

Mr. Stuart T. Saunders,
President.

I enclose herewith Mr. Fred Carpi's letter of April 28 with attachments outlining the two proposals submitted by Mr. Morris Forgash and by Lehman Brothers for purchase of the Railway Express Agency. You will note that Mr. Carpi would like to have the views of the stockholding lines with respect to these proposals by May 10. Some recommendation as to action on these proposals will be made at the meeting of the Agency's Board of Directors on May 15 or 16.

The Norfolk and Western holds nine shares of Railway Express Agency stock, with a book value of $100 per share. The Agency is also indebted to us for advances totaling $260,240. Our share of Express revenue under the Standard Express Operations Agreement of March 1, 1954, probably does not amount to more than about one half of the cost which we assume in the handling of Express business and I understand that this has been the situation for some time in the past.

The Forgash and Lehman proposals for purchase of the Agency are very similar in content. Each provides for purchase of the outstanding stock at $500 per share and repayment of some $28,600,000 due the owning lines (including our advancement of $260,240) in two annual instalments at the existing interest rate of 4% per annum, with the proviso that no dividends are to be declared by the new management until this entire indebtedness has been retired. Each proposal also contemplates operation of the Agency under the existing contract, with some modifications, for a brief interim period pending negotiation of new contracts, the terms of which are not precisely stated but which would contemplate full freedom of routing by REA both as between railroads and as between railroads on the one hand and motor carriers on the other. Under each proposal the railroads would also be relieved from the obligations imposed upon them by their current joint ownership of the Agency.

As you will see from the attachments, the Forgash proposal is in outline form, whereas the proposal of Lehman Brothers has been implemented by the preparation of definite agreement forms. At the meeting in New York on April 27 the consensus seemed to be that our attention should be directed primarily toward the Lehman Brothers proposal.

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Because of the widespread dissatisfaction with the present Operating Agreement and the necessity for early decision as to continued participation in that agreement, it appears that the alternative to acceptance of one or the other of the purchase proposals is general withdrawal from the existing agreement and ultimate liquidation of the Agency. In the event of liquidation, the owning railroads would be charged on a proportionate basis with the difference between the Agency's liabilities, including pension and retirement costs, on the one hand, and its assets on the other hand. A good deal of concern has been expressed also about the possibility that job-protective conditions might be involved in the abandonment of the Agency's service. While this possibility is somewhat speculative it is clear that liquidation under the terms of the existing agreement would be an expensive process.

On the whole, it would appear that sale of the Agency would be preferable to a winding up of its business under the terms of the existing agreement and I think we should express ourselves as favoring the Lehman Brothers proposal. Draft of a letter so advising Mr. Carpi and the other Eastern Directors is attached. Will you please advise whether or not you approve. Please also return the attachments.

Encls.

Hs-B

Martin P. Burks

Finance Docket
No 20812
REA Exhibit 66

SUMMARY OF THE TERMS OF LEHMAN BROTHERS' OFFER
TO PURCHASE RAILWAY EXPRESS AGENCY, INCORPORATED

Lehman Brothers or individual partners of the firm, with some investor-clients of the firm possibly participating, will purchase from the owning railroads all outstanding shares of Stock of Railway Express Agency, Incorporated, hereinafter called REA, at the price of $500 per share, payable on the closing date. No Buyer will be a carrier under any Federal, state or local law, nor a person who has control of such a carrier, and Lehman Brothers is willing to enter into an agreement that no Stock will, for a reasonable time, be sold to any trucker, forwarder, or other person to whom the present stockholders might take exception. The Buyers have expressed the intention that REA will continue to conduct an express business and represented that the purchase is not for liquidation.

Upon the sale of the Stock REA will, subject to required regulatory approvals, execute non-assignable Notes covering the amount of the advances to each stockholding railroad. Two Notes in equal amount will be issued to each railroad. Each will bear interest at 4%, and one will mature on December 31, 1959 and the other on December 31, 1960. The maturities are subject to possible postponement in the event that substantial additional liabilities of REA now unknown to the parties to the transaction should be discovered before December 31, 1960. If this should happen the due date of an amount of principal of the Notes equal to the amount of the newly discovered liabilities shall be postponed until December 31, 1965. Lehman Brothers is fully aware of the unrecorded and contingent liabilities of REA now known to REA and the railroads but not reflected on REA's Balance Sheet, so these would not come within the terms of the foregoing provision.

Copy to C.C.-Hu.-Team
5-21-59

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So long as any Notes are outstanding the proceeds of the sale of REA property not replaced and the proceeds of any mortgage or pledge of REA property will be applied to the payment of such Notes. Lehman Brothers has stated that they are satisfied that the program is feasible and that they have no doubt as to the ability of REA under the proposed new ownership to finance the Notes at maturity either by refunding or otherwise.

The Standard Express Operations Agreement will, subject to the required regulatory approvals, be amended on the closing date but effective as of April 1, 1959. It will provide for full freedom of routing by REA for the balance of the year, both as between different railroads and between a rail carrier on the one hand and a motor carrier on the other. For the period April 1 to December 31, 1959, each railroad will be paid a fixed amount per actual assigned car-foot mile of express service furnished by it. This amount will be approximately the same per assigned car-foot mile as such road would have received on the basis of REA's Annual Budget for 1959, First Quarterly Revision, dated April 14, 1959. After the end of the year REA will determine the amount of Rail Transportation Revenue which would have been paid to all railroads for the period April 1 to December 31 in the absence of the amendment. If this amount is more than 110% of the total amount actually paid in accordance with the amendment, the excess will be divided equally between the railroads and the Express Company and each railroad will receive a prorata share.

All provisions relating to railroad obligations on termination of the Agreement will be removed therefrom and the Agreement will terminate completely on December 31, 1959. REA, under the new ownership, will negotiate with the railroads now handling a substantial amount of express

traffic with the view of entering into a new contract or contracts as of January 1, 1960, covering the continued handling of express, but no obligation is placed on any railroad to execute such a contract. REA will negotiate for a standard agreement with all roads or with groups of roads, if this is feasible, but will be prepared to negotiate on a road by road basis if necessary.

BOARD OF DIRECTORS

Vol B3

Finance Docket No 20812

RAILWAY EXPRESS AGENCY, INCORPORATED REA Exhibit 67

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS,
JUNE 2, 1959

Regular meeting of the Board of Directors of Railway Express Agency, Incorporated, was held at the office of the company, 219 East 42nd Street, New York, N. Y., June 2, 1959, at 2:30 P.M., pursuant to due notice given by the Secretary.

The following Directors were present:

John M. Budd
Fred Carpi
Charles M. Davison, Jr.
Alfred L. Hammell
Harvey M. Johnson
William B. Johnson
Lester L. Knight
E. Spencer Miller
Ernest C. Nickerson
Lewis F. Ormond
Claude E. Peterson
Rudolph G. Rydin
Perry M. Shoemaker
Leo J. Tracy
Harry W. Von Willer

15 - constituting a quorum.

The meeting was called to order and presided over by A. L. Hammell, Chairman. The Secretary of the company, C. A. Brannan, acted as Secretary of the meeting.

RESIGNATIONS OF DIRECTORS

The resignations of Walter L. Price and Wayne A. Johnston as Directors of the company were presented, and on motion, duly made, seconded and carried, accepted.

highly recommended by their superiors; whereupon, after discussion, on motion, duly made, seconded and carried, the following appointments were approved, effective July 1, 1959:

B. A. Marks, Assistant to Vice-President, Southern Region, Atlanta, Ga., salary $12,127.56 a year, vice W. M. Mathews, salary $12,127.56 a year, retiring.

H. J. Layburn, Auditor of Express Receipts, New York, N. Y., salary $12,500 a year, vice W. D. Marikle, salary $11,113.20 a year, retiring.

J. A. Warren, Assistant to Vice-President, Traffic, New York, N. Y., salary $14,000 a year, vice J. R. Rohrer, salary $12,127.50 a year, retiring.

PROPOSED AMENDMENTS TO
STANDARD EXPRESS OPERATIONS AGREEMENT

The President referred to action of this Board at meeting May 15-16, 1959, directing that Items 1, 2, 3 and 4 of the committee report recommending certain changes in the Standard Express Operations Agreement be submitted and recommended to all carriers parties to the Agreement for their acceptance and approval, and stated that -

The proposal was submitted to the carriers May 18, 1959, and that of the responses received to date, twenty-three railroads had indicated disapproval.

After discussion, it was moved, seconded and carried that the proposal be rejected because of lack of unanimity, Mr. Nickerson not voting.

OFFER OF LEHMAN BROTHERS TO PURCHASE
RAILWAY EXPRESS AGENCY, INCORPORATED

After discussion, it was moved, seconded and carried by vote of eleven to four that the offer of Lehman Brothers to purchase the Agency be submitted to the stockholders and contract carriers with the recommendation that it be accepted.

The President said that to consummate the sale it would be necessary to obtain acquiescence of all of the stockholders and of all of the 178 railroads parties to the Standard Express Operations Agreement. In the discussion that followed officials of certain railroads stated that their companies would not agree to accept the offer.

It was then moved, seconded and carried (Mr. Von Wil[illegible]r voting "No") that in view of the statements by certain members of the Board that the railroads of which they are officials would vote against the proposal to sell, the President be directed not to submit the Lehman Brothers purchase proposal to the stockholders and contract carriers, and that the stockholding railroads receive in the summary of the minutes of this meeting the action on this motion.

OFFER OF MORRIS FORGASH TO PURCHASE
RAILWAY EXPRESS AGENCY, INCORPORATED

After discussion, it was moved, and seconded, that the offer of Morris Forgash, dated May 14, 1959, to purchase the Agency be submitted to the stockholders and contract carriers with the recommendation that it be accepted. By vote of seven to seven the motion failed to carry, Mr. Rydin not voting.

OFFER OF R. W. KEISER TO PURCHASE
RAILWAY EXPRESS AGENCY, INCORPORATED

After discussion, by unanimous consent, the President was directed to advise R. W. Keiser that the Board of Directors concluded not to give further consideration to his proposal for purchase of the Agency.

PROPOSAL FOR CONTINUED OPERATION OF
RAILWAY EXPRESS AGENCY, INCORPORATED,
UNDER RAILROAD OWNERSHIP

After it had been determined that no proposal thus far received for

purchase of the Agency by outside interests would be accepted unanimously by the stockholders and the contract carriers, the President submitted a proposal for continued operation of the Agency under railroad ownership.

Following discussion, it was agreed that a committee consisting of Messrs. Carpi, Martin and Rydin, together with legal representatives, would meet with the President June 16 in an effort to finalize the proposal for consideration by the Board of Directors at its next regular meeting to be held July 2, 1959.

DISPOSAL OF COMPANY-OWNED BUILDING, SEDALIA, MO.

The President reported that pursuant to authority granted by this Board at meeting January 28, 1958, to dispose of real property having depreciated value at time of disposal of $5,000 or less, he had authorized conveyance to Missouri-Kansas-Texas Railroad Company without cost a one-story brick building approximately 24'x 50' located on land leased from the Railroad at rental of $20 a month. The building was erected in 1923; ledger value is $6,511 which has been completely recovered through depreciation accruals. Taxes, insurance and maintenance costs averaged $38.04 a month during 1958.

Since the Railroad Company discontinued passenger train service through Sedalia in May 1958 the Agency has had no need for the building and efforts to sell it to outsiders or to the Railroad were unsuccessful. The Railroad Company agreed, however, to accept the building free of cost, and in order to effect monthly savings of $58 in ground rental, taxes, insurance and maintenance, title to the building is being conveyed to Missouri-Kansas-Texas Railroad Company, and the ledger value of $6,511 is being retired from the Agency's property accounts.

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INFORMATION COPY

Finance D...
No 20812
REA Exhibit 69

FROM
NEWS BUREAU
RAILWAY EXPRESS AGENCY
219 EAST 42ND STREET
NEW YORK 17, N. Y.

MURRAY HILL 6-7900

FOR IMMEDIATE RELEASE (4 P.M.)

THURSDAY, JULY 2, 1959

STATEMENT OF WILLIAM B. JOHNSON, PRESIDENT

RAILWAY EXPRESS AGENCY, INC.

"A plan for the reorganized operations of Railway Express Agency, providing for better service to the public on all existing types of express services under continued railroad ownership of the 120-year-old business, today received the unanimous endorsement of the Board of Directors.

"Principal features of the reorganization, planned to enable the company's management to put express operations on a profitable, self-supporting basis, are embodied in a proposed new Standard Express Operations Agreement between the Agency and all express-carrying railroads.

"The required unanimous approval of the new contract by the present 178 Standard Agreement lines has been recommended by unanimous vote of the Board. The management of the Agency will meet shortly with representatives of all contract roads to review the proposed Agreement.

"If the railroads all accept the terms of the new Agreement, it is contemplated that it would be submitted promptly to the Interstate Commerce Commission for required regulatory approvals. The Agreement would become effective the first of the month following I.C.C. approval and would run through December 31, 1973.

"It is premature to discuss details of the various terms of the proposed Agreement, pending individual rail carrier consideration and action during the next several weeks. However, it can be revealed

that the Agreement contemplates certain major changes from present operations during the next two years, further changes effective July 1, 1961, with final transition to the eventual fully reorganized operations beginning January 1, 1963.

"Under the Agreement, the Agency generally, with some qualifications, would be given immediate complete freedom of line-haul routing of express traffic with the power to select such routes and modes of transportation most advantageous to more efficient and economical operations. Since there would be no fixed or historical distribution of traffic among carriers for line haul movement, it is expected that both service to shippers and the Agency's financial results would be improved materially.

"The Agreement also would provide, in several steps, significant changes in the method of payment to contract railroads, important both to those carriers and to the Agency. The principal changes are worthy of discussion.

"Effective July 1, 1961, the payments to the contract railroads would be changed in that they would be based on an average rate in each regional group per car-foot mile of line haul service rendered by each carrier. At present, there are no such rates, the contract roads each receiving their pro rata share of everything that is left in the respective regional group accounts after deduction of Agency expenses.

"Final step in the transition is the provision that, beginning January 1, 1963, Railway Express, in effect, purchase its transportation from the rail lines on the basis of service rendered in terms of car-foot miles. The rates would be determined by a formula related to each group's average cost.

MORE...

2W4

"Any excess funds remaining after payments to the carriers beginning July 1, 1961, would be divided equally between the Agency and the contract carriers. Thus, under the proposed terms, Railway Express Agency would have the opportunity for the first time of earning and retaining a profit for reinvestment in the further progress and stability of the business.

"Among many other changes the terms of the proposed new Agreement would provide, are: (a) a slight increase in the Agency's share of gross revenues on carload shipments, (b) instead of unanimous approval, Agreement amendments would require the consent of roads handling an aggregate of 85 per cent of express traffic, and (c) after the effective date of the new Agreement, railroads could not withdraw until after June 30, 1961, and then could do so under revised settlement provisions on 12 months' notice, or eight months' notice if a previous 12-month notice had been given for withdrawal on the same date by another Agreement party.

"Since the scope of operations of many smaller roads is subject to continuing change, it is anticipated that the withdrawal provisions would continue to be important where such carriers discontinue operations suitable to the handling of express.

"It is anticipated that under the new operations, the Agency would be put in a sounder financial and operating condition. Accordingly, there would be the important opportunity to extend and enhance for express shippers throughout the nation and the world the many fundamental advantages of the far-flung and complete single-carrier services of Railway Express. Express shippers everywhere would be assured of having available -- on a convenient, flexible and coordinated basis -- the best of all underlying modes and routes of transport."

# # # # #

Finance Docket
No 28612
REA Exhibit 74

RAILWAY EXPRESS AGENCY

INCORPORATED

OFFICE OF VICE PRESIDENT, ADMINISTRATION AND FINANCE
219 EAST 42ND STREET
NEW YORK 17, N. Y.

C. J. JUMP,
VICE PRESIDENT

July 31, 1959

Mr. David C. Bevan,
Chairman, Finance Committee,
c/o The Pennsylvania Railroad Company,
Six Penn Center Plaza,
Philadelphia 4, Pa.

Dear Mr. Bevan:

Responding to your joint letter of July 28 to members of the Finance Committee:

Bonds calling for an interest rate of 5% were issued in the sum of $32 million in 1930. Amounts required to meet the semi-annual maturities were advanced to the Agency by the stockholders. When one-half of these bonds had been paid off the remaining bonds were called and were replaced by serial notes on which the interest rates ranged from 3/8% to 2.5%. The stockholders continued to advance funds for retirement of the notes.

Interest payments on the advances received from the stockholders have been made as follows:

5½% March 1, 1930 to February 28, 1930
6% March 1, 1930 to December 31, 1933
5% December 30, 1933 to May 31, 1955
4% June 1, 1955 to date

Fixing at 5% the interest rate on the notes to be issued to the stockholders would result in an increase of 25% in the interest charges. This would be equivalent to some $285,000 a year and to that extent would reduce the amount which otherwise would be available for payment to the railroads for hauling express.

Under the Amended Express Operations Agreement now before the Interstate Commerce Commission for approval the Agency ultimately will assume fixed obligations to the railroads for the transportation of express traffic. I would hope that the railroads as stockholders will not make it too difficult for the Agency to meet the payments to the railroads as contractors when the Agency begins to operate on more nearly an arm's length basis.

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It is suggested that the notes to be issued to the stockholders provide for interest payments at the prime rate in effect during each interest period; that if the prime rate should change the change in the rate to be paid to the stockholders be made as of the beginning of the interest period nearest the date of the change in the prime rate. This would bring about an immediate increase of 1/2 of 1% in the interest payments because the prime rate now is 4½% as compared with 4% now being paid by the Agency.

I concur in your proposal concerning the establishment and operation of a sinking fund. However, I believe the sinking fund provision should be 10% of the disposable income, i. e., 10% of the Agency's net after taxes.

I believe also that the notes to stockholders to cover amounts advanced by them which were required and used by the Agency to purchase the properties of the Agency's predecessor should be subordinated to any and all other indebtedness of the Agency except, perhaps, to the extent of the sinking fund.

Yours very truly,

Vice President.

cc-Messrs. W. R. Grant
E. Spencer Miller
L. F. Ormond
John B. Reid
R. G. Rydin

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[Page numbers in upper right hand corner
are to pages of typewritten transcript,
as filed.]

Interstate Commerce Commission
Washington, D.C. 20423

I, ROBERT L. OSWALD, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is a true copy of the Transcript of the Stenographer notes of hearing held August 18, 1959, in Departmental Auditorium Conference Room- in Docket No. 33140, the Express Contract, the original of which is now on file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 29th day of June, A.D. 1976

Robert L. Oswald
SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

efficiency of the operation the business will create by

ORIGINAL

STENOGRAPHERS' MINUTES

BEFORE THE

Interstate Commerce Commission

DOCKET No. 32444

In the Matter of:

EXPRESS CONTRACT, 1959

At Washington, D. C.

Date August 18, 1959

RECEIVED
AUG 24 1959
INTERSTATE
COMMERCE COMMISSION

CSA REPORTING CORPORATION
OFFICIAL REPORTERS
939 D Street, N.W.
Washington 4, D. C.
REpublic 7-3600

BEFORE THE INTERSTATE COMMERCE COMMISSION

- X

: Docket No. 30160

- X

Conference Room B,
Departmental Auditorium,
Washington, D. C.
Tuesday, August 10, 1959.

Met pursuant to notice at 9:30 o'clock, a. m.

BEFORE:

H. HOSMER, and

JOSEPH FITTIPALDI, Examiners.

APPEARANCES:

R. J. FLETCHER, Esquire, 219 East 42nd Street, New York 17, New York, appearing for Railway Express Agency, Applicant.

C. GEORGE NIEBANK, Jr., Esquire, 1211 Railway Exchange Building, Chicago 4, Illinois; appearing for Applicants.

PAUL R. DUNN, Esquire, 1138 Transportation Center, Six Penn Center Plaza, Philadelphia 4, Pennsylvania, appearing for Applicants.

WILLIAM D. McLEAN, Esquire, P. O. Box 1808, Washington 13, D. C., appearing for Railway Express Agency, Applicant.

STARR THOMAS, Esquire, 60 East Jackson Boulevard, Chicago 4, Illinois, appearing for Applicants.

CHARLES DONLEY, Esquire, 34 Market Place, Pittsburgh 22, Pennsylvania; appearing for United States Potters Association;

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Applicant's				
William B. Johnson (Railway Express Agency, Inc.)	8	-	-	-
Fred Carpi (Pennsylvania Railroad Co.)	35	-	-	-
John M. Budd (Great Northern Railway)	52	-	-	-
W. A. Johnston (Illinois Central R.R. Co.)	60	-	-	-
Protestant's				
None.				

E X H I B I T S

None.

Examiner Fitzpaldi is sitting with me and will assist in the disposition of the case.

Who appears for applicants?

Mr. Fletcher: R. J. Fletcher, 219 East Forty-second Street, New York 17, New York, apearing on behalf of the applicants. I am an attorney admitted to practice before the Interstate Commerce Commission.

Mr. Niebank, Jr: My name is C. George Niebank, Jr., 1211 Railway Exchange Building, Chicago 4, Illinois, appearing for Applicants - Railway Express Agency, Inc. I am an attorn admitted to practice before the Commission.

Mr. Duke: Paul R. Duke, 1138 Transportation Center, Six Penn Center Plaza, Philadelphia 4, Pennsylvania, appearing on behalf of the applicants. I am an attorney, admitted to practice before the Commission.

Mr. Thomas: Scarr Thomas, 80 East Jackson Boulevard, Chicago 4, Illinois, appearing for applicants. I am an attorney admitted to practice before the Interstate Commerce Commission.

Mr. Mulcahy: William D. Mulcahy, Post Office Box 1206, Washington, D. C., appearing for Railway Express Agency, Applicant. I am an attorney, admitted to practice before the Commission.

Exam. Hosmer: Are there any other appearances for the Applicant?

(No response)

Exam. Hosmer: Apparently not.

Are there any intervenors? That is to say, are there any petitions for intervention to be filed at this hearing?

Mr. Augello, Jr: My name is William J. Augello, Jr., 99 Hudson Street, New York 13, New York; appearing on behalf of National Fisheries Institute, Inc., Society of American Florists, and Produce Packaging Association, Intervenors as their interests may appear. I am an attorney, admitted to practice before the Commission.

Exam. Hosmer: Do you have a copy of your motion for leave to intervene, sir?

Mr. Augello: Yes sir.

Mr. Ehalt: William C. Ehalt, 99 Hudson Street, New York 13, New York, appearing on behalf of National Fisheries Institute, Inc., and the Society of American Florists. I am admitted to practice before the Commission. My petition for leave to intervene was filed in conjunction with that of Mr. Augello.

Exam. Hosmer: Are there any other petitioners [illegible] appearance?

Exam. Hosmer: If there are all the petitions of intervention I want to point out under the Commission's rules in this kind of a proceeding no one can enter an appearance without having filed a petition for intervention.

Now some of you have come here apparently not aware of that rule and have indicated you want to enter an appearance. I have no authority to waive that rule. Perhaps if the applicants are willing for it to be waived you could appear. Otherwise, as I understand the procedure they will not be permitted to enter an appearance.

Mr. Donley: Mr. Examiner, I am Charles Donley, and I have given my appearance to the Reporter. I am here for the Chamber of Commerce of Pittsburgh, for the United States Potters Association, for Fisher Scientific Industrial Company, and for J. B. Matthews & Company.

All of these companies are large shippers with the Railway Express Agency. Certainly I have no direct testimony, and more certainly I have no protest. If I were required to say which side we are on I would say we appear in support of the Applicants.

Exam. Hosmer: Mr. Donley your name will show in the record.

Mr. Donley: Thank you.

Exam. Hosmer: Any other statements on behalf of parties

(No response)

Exam. Hosmer: If not the application may proceed.

Mr. Fletcher: Mr. Examiner, I have here a letter from the law offices of Burchmore, Good and Labinette, of Chicago, on behalf of The National Industrial Traffic League wherein he says, "Unfortunately, the above hearing date is one which I cannot conveniently meet. I, therefore, request of you as counsel for the applicant that you will speak for me at the hearing to state to the Commission that the League fully supports the application."

Exam. Hosmer: It can be filed in the correspondence file of the docket. It has been read into the record anyhow.

Mr. Fletcher: I have also a supplemental application which has been filed with the Secretary's office this morning on behalf of the applicant carriers and all parties to the Agreement with the exception of the Chicago and Northwestern.

Do you want a copy of it filed with the record?

Exam. Hosmer: Oh no.

Mr. Fletcher: I have plenty of copies if anyone wouuld like to have a copy of it.

Since Section 5 (1) of the Act requires the Commission to approve only the application of carriers who have acceded to it we have here today the assent from all the carrier parties to the application, some of these in the form of Board resolutions which have been adopted and some, where

[illegible] not had a chance to meet not with the Board or executive officers, saying the application will be adopted.

These were filed in the hearing in 1953 under the present contract and I presume will be filed likewise for this contract. We do not have copies of these because we did not bother to make them all up.

Exam. Hosmer: I do not think they are any more than of nominal importance.

Mr. Fletcher: I also have an errata sheet covering a list of errors in the application, and one of the exhibits in the application and I think also there has been one minor change, but none of these change the meaning in any way.

Should I file those as exhibits in the proceeding?

Exam. Hosmer: Yes. I think we could call them errata and file them with the application.

Mr. Fletcher: All right. I think that concluces my preliminary remarks, and I will call Mr. Johnson.

WILLIAM B. JOHNSON

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Fletcher) Do you have a statement, Mr. Johnson?

A Yes sir.

Before doing that, Mr. Examiner, I'd like to say I am pleased to state that practically all of our Board of Directors are here, fifteen of whom are railroad presidents or vice

preliminary, and I shall then be glad to demonstrate my interest in the concept and reasonableness of the provisions of this petition.

My name is William B. Johnson. I am President of Railway Express Agency, Incorporated, with headquarters at 219 East 42nd Street, New York City.

I have been President of the Express Company since March 1, 1959. For several years prior to that date I was familiar with the affairs and problems of the Company. I worked on the drafting of the 1954 Standard Agreement and the application to the Commission for approval of its pooling arrangements. I served on the Express Company's Law Committee, and participated in several express rate proceedings.

Railway Express Agency was organized by the major express carrying railroads and commenced operations in 1929 under the terms of an Express Operations Agreement, the pooling provisions of which were approved by the Commission in Securities and Acquisition of Control of Railway Express Agency, Incorporated, 150 I. C. C. 429.

The Company was operated as a joint facility of the express carrying railroads, the intention being that it would serve more or less as the express department of each railroad. The operations became increasingly unsatisfactory to many of the railroads and a great deal of thought was given to the arrangements to supersede the 1929 Agreement upon its expira-

[illegible] February 28, 1954. The results [illegible] Express Operating Agreement of March 1, 1954, the profits [illegible] of which were approved by the Commission in Express Contracts, 1954, 291 I. C. C. 11.

RESULTS OF OPERATIONS UNDER 1954 AGREEMENT

The 1954 Agreement was designed to improve express operations, both as to service and financial results. In due course, however, it was discovered that the changes from the 1929 Agreement were not sufficiently great to bring about the necessary changes in operating methods.

Results improved for a time and the out-of-pocket express deficit of the railroads was reduced to an estimated $16,000,000 in 1955. However, it increased to approximately $24,500,000 in 1956 and while I do not have the figures for 1957 the deficit for that year was undoubtedly substantially larger than in 1956.

For 1958 the figure has been estimated to be over $40,000,000. In the early part of 1959 it was estimated that the express deficit for this year, in the absence of major adjustments, would be in the vicinity of $38,000,000. These figures are all on an out-of-pocket basis.

It became evident in the latter part of 1959 that these conditions could not continue. The situation since that time is, I am sure, familiar to the Commission and the parties to this proceeding and I shall not recapitulate the events in detail

[illegible] unit cost of the service as a whole [illegible]

[illegible] months of the present depot, and at times liquidation appeared to be almost inevitable.

This result was avoided only by long, hard work by the Board of Directors of the Company and committees of the Board in an effort to produce an arrangement which, while not in all respects what many of the railroads might prefer, would at least be acceptable to a large majority of them. At the same time the most stringent economies in the Express Company's operations were being put into effect. As a result the financial outlook has been substantially improved, and the out-of-pocket express deficit of the railroads is now estimated at $10,500,000 for 1959, even taking into account the increased payroll taxes effective June 1. There is not a great deal more that can be done to effect economies without sizeable capital expenditures.

On July 2 the Board unanimously recommended a draft of a new agreement and on July 16 this draft was accepted by practically all express carrying railroads except the Chicago and North Western. That road, while it is willing to continue to handle express, will now do so under the terms of the new Standard Agreement.

THE PLAN FOR ADDITIONAL OPERATIONS

The overall plan approved on July 16 includes the new agreement and the economies in operation to which I have

Stanski begins p.1

referred but these cannot do the job alone. An essential part of it is the receipt of additional gross revenue from changes in express rates. To provide higher receipts in the immediate future, an emergency increase has been proposed and tariffs to make it effective have been filed with the Commission. In addition, certain reduced rates of the incentive type have been filed to attract lucrative traffic which is not now moving by express.

However, in order to provide the greatest returns, it is thought that a complete revision of the express rate structure may be necessary, and a thorough study of this subject is another important part of the overall plan. It is now being initiated and will be carried out as rapidly as possible. Since we want to do a thorough job, it will, of necessity, take some time.

Another feature of the plan is the issuance of notes to the railroads to cover their loans to the Express Company which have heretofore been carried on the Express Company's books simply as an open account debt to affiliated companies. An application for authority to issue these notes will be filed with the Commission in two or three days.

I should mention that on July 31 the Express Company reached agreement with the express carrying airlines on the terms of a new Air Express contract, so the future of this part of the business is also assured. The consent of Morgan

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Guaranty Trust Company to the new Standard Express Operations Agreements, required by the terms of a loan agreement between that bank and the Express Company, has been obtained. Accordingly, in order to put the plan for the future conduct of the express business in operation only the approval of the Commission of the pooling arrangements, and the rates is required.

DISADVANTAGES OF THE 1954 AGREEMENT

It is my firm belief that the new provisions, which I shall describe, in the agreement now proposed to become effective on October 1, 1959, will, in time, achieve the desired results and that the express business can be conducted in such a manner that it will no longer be a deficit operation. My reasons for this belief will appear from a review of the fundamental difficulties in the past. First, and perhaps most important, for thirty years the Express Company has not had and could not have any profit or loss. After all of its expenses, except the expenses for rail transportation, were paid from gross express receipts the balance was turned over to the railroads as payments for the transportation of express. Thus, the Express Company could not operate either in the black or in the red. Its management has not had the benefits or the disciplines of a profit and loss statement. I do not mean to imply that they have been intentionally careless about expenses or have not tried to operate the business in the most efficient manner, but there is bound to be a certain lack of incentive when everyone knows that regardless of the

efficiency of the operation the business will exactly break even This situation will, after a short transition period, be changed under the new agreement.

A second weakness has been the fact that in its day-to-day activities the Express Company has not had the benefit of a unit cost for the line haul portion of the transportation service which it has offered the public. The management has known that the total express operation of both the Express Company and the railroads was a deficit one and to a very substantial degree. But, the Company paid no fixed amount for rail service and the rail unit cost was not even regularly known on a current and precise basis. It is not surprising, in my judgment, that there has been no daily consciousness of the cost incurred by the railroads in providing each unit of rail service which the Express Agency consumed. Inevitably, there has been a tendency to think of such cost, when considered at all, as the expense of some other company, with no line haul cost being incurred by our own company. This necessarily resulted in inadequate consideration of what traffic was profitable, what rates were required to make blocks or types of traffic profitable and, in fact, just what the solicitation and operational aims of the management should be. This fundamental weakness will, in due course, be eliminated under the new Agreement.

A third weakness has been the practice of sticking pretty

closely to historical routing and traditional methods of handling express traffic. This has been true both with respect to routing among the various railroads and as to shifts from one mode of transportation to another. The 1954 Agreement was intended to give additional freedom to the Express Company in this regard, but experience has shown that it did not produce such an effect. With the benefit of this experience, I am confident that the freedom of routing provisions in the Agreement now proposed, which I will describe, will do the job.

A difficulty closely related to the one just mentioned is that express service has largely been performed on passenger trains, the highest cost surface transportation there is. By and large, it is also the fastest, especially for long distances, so this situation cannot be altered radically overnight if a true express service is to be rendered, as it must be. A number of changes can, nevertheless, be made with greater economy and equal or better service. Fast merchandise freight trains, with piggyback operations in the forefront, offer, in some cases, a service for express as good as passenger trains. The opportunities here are limited, but there do exist instances where line haul express costs can be substantially reduced without sacrificing time in transit, and with no increase or an actual reduction in terminal costs. In addition, a considerable amount of short-haul traffic, especially around large terminal areas, can be shifted to truck with lower

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costs and greatly improved service.

The weaknesses which I have described will be cured by the combination of freedom of routing and requiring the Express Company, after a period of transition, to purchase transportation from the railroads on a car-foot mile basis at rates to be fixed by an out-of-pocket cost formula. If the Express Company cannot obtain revenues sufficient to pay its expenses, including such rates, it will, of course, operate in the red. If, as we believe, it will be able to obtain revenues more than sufficient to cover its expenses the excess will be divided evenly between the Express Company and the railroads. Accordingly, it will be possible for the Express Company to earn a profit or sustain a loss for the first time in its history and our officers and employees will know it. This, together with the freedom of routing, will place the business on a footing where it must succeed or fail by its own efforts. It will have greater opportunities and also greater responsibilities. It seems obvious to me that this is a much sounder method of conducting any business enterprise.

CHANGES FROM 1954 AGREEMENT

Most of the changes in the proposed Agreement from the provisions of the 1954 Contract are for the purpose of placing the Express Company in this new status which I have just described. A few are simply for the purpose of clarification or to conform the language of the Agreement with present

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practice. I shall now describe the changes of substance and indicate the reason for, and the effect of each one.

Carload Traffic

First, as to carload express traffic, there are changes in details only. A stated percentage of the gross revenue will continue to be paid direct to the railroads handling the traffic. Article 9, Section 6 and Article 10, Section 1 of the new Agreement make this clear. However, the percentage to be so paid is changed from 90 to 87-1/2. Some railroads do not participate at all in the carload traffic, and a number of others do so only to a slight degree. In order that they neither receive a windfall from, nor are injured by, the Express Company's participating in such traffic, the portion of the revenue to be retained by it must be approximately equal to its expenses in handling the traffic. When the 1954 Agreement was drafted, it was believed that 10 per cent of the revenue would be sufficient for this purpose, but more detailed cost studies, which have been made since that time, indicate that the Express Company's expenses in connection with carload traffic average 12.4 per cent of the revenue.

Another change with respect to the carload business is contained in Article 2, Section 2(a). The Express Company now handles all this business and will continue to do so in the immediate future. Any road may take it back on six months' notice, which provision is the same as in the 1954

Contract. The change is that, once having taken the business from the Express Company, a railroad cannot, in the future, as it could under the present Agreement, again require the Express Company to handle it. If the carload traffic should be taken in large part from the Company, we would doubtless find it desirable to sell part or all of the refrigerator cars and certain other facilities. It would be unfair for the railroads by unilateral action to force reacquisition of cars or bring about a situation where the Express Company would have a duty but no facilities with which to perform it.

The definition of carload traffic has also been rewritten-Article 9, Section 2(a)--but only for clarification; no change in present practice will result.

Pooling Provisions

The Commission, of course, is interested primarily in the new routing provisions and those pertaining to the payments to the railroads for lcl express traffic, since the application here is for approval of the pooling of traffic and revenues. These provisions are also of prime importance to the Express Company and the future of the business. They comprise the heart of the over-all plan for future operations.

To achieve freedom of routing, Article 9 of the 1954 Agreement on division of competitive traffic is deleted in its entirety. The practices observed in the past no longer have any bearing on the operation of the business. Instead,

n-8 the Express Company is admonished in Article 2, Section 1(d) to conduct the business efficiently and economically, using such routes and modes of transportation as shall, in its judgment, be most advantageous in achieving this objective. Article 2, Section 4, provides that the Express Company may select any instrumentality for the transportation of express traffic and shall have full freedom of routing, with one exception only. If it is proposed to divert traffic from a railroad to another mode of transportation, the railroad shall receive reasonable notice of such intention and is given the opportunity of appealing from the Management to the Board of Directors of the Express Company. The Board's decision shall be final. I do not believe this provision will operate to prevent any such diversions when real advantages to the business as a whole can be shown to be likely to result therefrom.

The provisions I have described will not lead to a radical change in operations on October 2, since there has not yet been time to study the subject intensively. Nor do I mean to imply that most of our present routing is wrong. But the shackles are removed, and we have already started a study of changes which should result in more economical operations and better service to the public. When changes for the better are found, either financial or service-wise they can be made effective. It will be up to the Express Company to work out

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the best methods of operating the business.

The method of paying the railroads for their services in carrying express will be changed in stages. For twenty-one months, the present plan will be continued with relatively minor modifications. Then, for eighteen months, payments will be made on a car-foot mile basis with the rates determined by experience in a past base period. Finally, beginning on January 1, 1963, payments will be on a car-foot mile basis, with the rates determined by a uniform out-of-pocket cost formula. It might be thought desirable to go to a purchase of transportation basis immediately, but I think it can be demonstrated that there are sound reasons for the transition period.

From October 1, 1959 to June 30, 1961, the railroads, as provided in Article 9 of the new Agreement, will continue to receive, for lcl traffic, the remainder of the gross revenues after the deduction of Express Company expenses, and distribution to the roads will continue to be made on a sampling basis, as at present. The reason for this is that a prior base period is required for the determination of payments to individual railroads when they are made on a car-foot mile basis. It seems clear that this base period should be a period during which the freedom of routing provisions are in effect. Otherwise operation during the payment period might be so different from those during the base period that

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its use would have little validity. Accordingly, such base period will be the twelve months from July 1, 1960 to June 30, 1961. The Express Company will have until July 1, 1960 to rearrange such operations as need to be changed.

There are, however, two changes effective October 1. Profit on real property and equipment sold by the Express Company will be retained by it, instead of going into revenues to be distributed, as at present. This change is in Article 9, Section 7, of the new Agreement. This will permit the immediate accumulation of funds for capital purposes, to the extent that surplus property can be disposed of on advantageous terms. These funds may not be great in the immediate future, but at least a start can be made.

The second change during the initial period is in accounting for revenues on lcl shipments moving in three or four groups. The Express Company costs on these shipments are chiefly in the origin and destination groups where the terminal services are performed. There are some Express Company costs in the intermediate group, but they are relatively much less. However, the revenue at present is prorated to all roads on factors which assume equivalent express terminal costs in each group. The new Agreement assigns 37 per cent of the sum of the origin and destination shipment handling costs to the origin group, 26 per cent to the intermediate group or groups and 37 per cent to the destination

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group. This is accomplished by an additional equalization adjustment as provided in Section 8(c) or Article 9 of the new Agreement. The present adjustment is between origin and destination groups only. The additional one will add for each shipment 13 per cent of the sum of the average shipment-handling costs in the origin and destination groups to the revenues of the origin group, 13 per cent to the revenues of the destination group and will deduct 26 per cent from the group revenue of the intermediate group or groups.

Payments during the 18-month period from July 1, 1961 to December 31, 1962 are covered by Section 2 of Article 10 of the new Agreement. Rail transportation revenue for each group for each month will be determined by multiplying the car-foot mile rate for the group by the number of actual assigned car-foot miles of the group. The rate to be used will be determined by dividing the group revenues for such period, computed under the old method, by the assigned car-foot miles of lcl express in the group for the same period. For the months between July 1, 1961 and December 31, 1961 and between July 1, 1962 and December 31, 1962 the base period will be July 1, 1960 to December 31, 1960. For the months between January 1, 1962 and June 30, 1962 the base period will be January 1, 1961 to June 30, 1961. The group revenues so ascertained will be distributed to the individual railroads in that group on the basis of the relationship between their

car-foot mile rate and the group car-foot mile rate in the base period.

At the end of each six-month period the total rail transportation revenue for all roads which would have been payable had the Article 9 method of payment still been in effect will be ascertained. If this amount is greater than the payments actually made to all railroads the excess will be divided equally between the Express Company and the railroads as a whole. The Express Company can thus earn a profit during this period if group revenues can be increased at a higher rate than car-foot miles. I believe this can be accomplished.

The transition steps end on January 1, 1963, and payments beginning on that date are covered by Section 3 of Article 10 of the new Agreement. This is a permanent basis. The group rail transportation revenue will still be determined by multiplying the group car-foot mile rate by the number of lcl express car-foot miles in the group. The group rate, however, will be the out-of-pocket car-foot mile cost of transporting express by the railroads in the group as a whole. This in turn will be determined by the use of a uniform formula approved by at least three-quarters of the railroad Directors of the Express Company. If such approval cannot be obtained the question will be decided by arbitration.

A very considerable amount of study will be required to develop a satisfactory formula. Field tests may be necessary.

m13 Sampling procedures may have to be developed. All this will take time and that is the reason for the postponement of the permanent basis until January 1, 1963.

Group revenues will be distributed among the railroads in the group by the same method that will be followed in the July 1, 1961 to December 31, 1962 period, i.e., by using the relationships of the base period. Likewise, the total payments which would have been due under Article 9 if it were still in effect will continue to be ascertained and the excess, if any, over the actual payments will continue to be divided between the Express Company and the contract railroads. Pooling of revenues will thus continue to this extent.

On the permanent basis the Express Company will be able to earn a profit if, as we hope and expect, group revenues can be made to exceed the total expenses of the Express Company, including the required payments to the railroads. Moreover, in this case the railroads will be able to recover something over their out-of-pocket costs of transporting express. The profits of the Express Company will, no doubt, be modest at first and will probably all be used for necessary capital expenditures for some time to come. But the business will be on its way to being on a sound footing. This may sound somewhat optimistic, but I think it can be done. It must be done if the express business is to continue.

Equally important, the Express Company management will

know what the unit cost of the service as a whole will be. It will be invaluable in formulating traffic policies, a reasonable rate structure and economical operational procedures. For the first time our books will reflect a cost for transportation and permit effective budgeting of this expense.

Other Important Changes

The changes I have described are those relating to the modified pooling arrangements which must be approved by the Commission. There are some other changes which are important to the conduct of the business and should be mentioned.

In the past the Express Company has borne the cost of all damage to its property and injury to its employes regardless of where the fault lay. This is changed in Article 13 of the new Agreement and liability is imposed on a railroad when such damage or injury is caused by its sole negligence. This change is clearly equitable in view of the new status of the Express Company.

The Express Company will remain liable for all loss and delay of and damage to express shipments. As to carload shipments, the 12-1/2 per cent of the revenues retained by the Company makes allowance for this factor. As to less-carload shipments the maintenance of records sufficient to show where the fault might lie would be very expensive and wasteful. Article 13 also spells out in detail the rights and duties of the parties and the procedures to be followed

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in settling claims.

Substantial changes have been made in Article 17 of the present Agreement covering amendments, withdrawal provisions and settlement of accounts. This Article becomes Article 16 of the new Agreement.

The present Agreement provides that it can be amended only by unanimous consent of all railroads parties to it. A single road can block the change desired by all others and this is so even if such road no longer handles express, if it has not formally withdrawn from the Agreement.

I can give you some examples of this. I think we have 14 railroads who some months ago served notice of withdrawal from the present Agreement effective at the end of this year.

We have more than that, but of those there are 14 who have not handled express for a long time.

It was necessary in order to make this new agreement effective, to get their assent to the terms of the agreement, but which they will never operate under.

In this connection I might also say yesterday the Lehigh Valley advised me that if the contract is approved and the other essential features of the plan go into effect the Lehigh Valley Railroad will rescind its withdrawal. It has already assented to the new provisions.

The New York Central, as you know, has made a similar statement.

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This feature has made amendments very difficult indeed. Section 1(c) of the new Article 16 still provides that the Agreement shall be uniform at all times, but it can be amended by the consent of railroads representing 85 per cent of the total car-foot miles of express. A non-consenting road may withdraw upon the adoption of an amendment, but if it remains a party to the Agreement it will be bound by the amended terms. The flexibility of these new provisions is obviously desirable.

The term of the new Agreement (Article 17) is the same as at present, until December 31, 1973, but the withdrawal provisions have been changed (Article 16, Section 2). No road can withdraw during the first transition period, October 1, 1959 to June 30, 1961,except, as I have said, if the Agreement is amended against its wishes. This prohibition is clearly desirable in order to give the Express Company a reasonable time to prove itself.

Any road is permitted to withdraw at the end of this period, on June 30, 1961, on relatively short notice--90 days. This provision was inserted so that a railroad desiring to get out at the end of the period would not be underthe necessity of making this decision and of serving notice only a few months after the start of the period. After June 30, 1961 the withdrawal provisions are similar to those in the present Agreement except that the required time of notice is shortened

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from 18 months to 12 months in the case of the first road giving such a notice, and from 12 months to 8 months in the case of other roads desiring to withdraw on the same date. These periods seem ample, particularly in view of the fact that, as I shall mention next, the detailed accounting as between the withdrawing road and the Express Company provided in Article 17 of the present Agreement will no longer be required.

The remaining changes in Article 17 of the present Agreement are the deletion of Sections 4 and 5 relating to the rights and obligations of the parties upon withdrawal and the settlement of accounts upon termination of the agreement and liquidation of the Express Company. This is clearly in line with the new independent status of the Express Company, which will now be expected to stand or fall on its own. A most important result is that termination of the operating agreement will not, of necessity, force liquidation of the Express Company as is provided in Section 5 of the present Article 17. This absolute requirement of the present Agreement turned out to be one of the serious difficulties in working out a plan during the past few months. Liquidation will not be the only course available if major roads withdraw from the new Contract. This important change is most definitely in the public interest.

The treatment of the advances which was spelled out in

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Article 17 of the present Agreement has been taken care of by the proposal to issue notes containing the terms of the Express Company's obligation to pay. As I said, an application for authority to issue such notes will be filed with the Commission.

I have described all changes of importance which have been made in the proposed Agreement. The balance of changes are in minor details only and do not in any way affect the pooling arrangements. All changes are pointed out in the notes in Exhibit C to the application in this proceeding.

OPERATIONS UNDER THE NEW AGREEMENT

I would like to close with a few remarks about future operations. I have already referred to the complete study of the express rate structure which is being initiated. I believe that this is a matter of great importance and that a structure can be developed which will result in increased revenues for the Company and at the same time, be more attractive to the important users of express service. Fundamental to our approach to this problem will be the conviction of management that we cannot survive as a stand-by carrier for traffic which other agencies of transportation either cannot or will not handle.

The intensive thought which has been given over the last few months to the reduction of expenses will continue and there will be added to it intensive studies of ways to improve

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the service. In line with both of these objectives a tentative schedule of required capital expenditures has been drawn up. Studies already completed indicate that the investment of about 10.9 million dollars will result in annual savings of about 3.9 million dollars and will greatly improve the service to the public. These expenditures will be for new trucks for over-the-road truck routes, for two-way radios for truck dispatch, for conveyor systems in a number of terminals, and other equipment. In due course relocation of some terminals will undoubtedly be found desirable. This entire program cannot, of course, be put into effect immediately, since the capital is not now available, but it can and will be started at once and a substantial part of the new equipment is scheduled for first-year purchase.

I am aware of the fact that service has not been altogether satisfactory during the past few months. This was the inevitable result of the drastic economies, some of which were effected without much notice. This program was absolutely essential if the business was to be continued on any basis. As I said, intensive study will be given to the matter of providing better service while preserving in large part the economies effected.

In discussing service I should add we do not contemplate discontinuing express service at any points on the Chicago and North Western where there is any substantial volume of

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traffic. Such points will continue to be served in connection with other carriers or in connection with the North Western under arrangements outside the Standard Agreement.

When it appeared that the Express Company might be liquidated all rail express advertising was discontinued, a substantial portion of the sales force dismissed and much much truck maintenance was deferred. Obviously, these activities are essential to a continuing business and they will be re-activated at a cost of approximately two million dollars annually.

For the reasons I have outlined, I believe the Express Company has a future. The thought given to the subject during the last few months has convinced us that one express company rather than several of them, or the operation of the express business by each railroad individually, is clearly in the interest of better service to the public and of economy in operation. Certainly, the continuance of one company will not restrain competition, since the Company at present has as much competition as any business that I know of. Parcel post, motor carriers, air freight and freight forwarders are all very active in the small shipment field. I do not anticipate that they will become less so, but I do anticipate that we will develop for express a place in the transportation picture of the country where we can usefully and profitably service the shipping public.

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The Agreement now proposed is a great improvement from the standpoint of Express Company operations over the one now in effect. At the very least it is undeniably true that this Agreement if approved as submitted, and if the other parts of the program become effective, will serve the public interest by preventing the liquidation of Railway Express Agency at the end of 1959. We believe it will go much further than this and permit useful and profitable operation on a permanent basis. In any event, the Express Company submits that the approval by the Commission of the pooling arrangements contained in the new Express Operations Agreement will be in the public interest.

Q (By Mr. Fletcher) Does that conclude your statement, Mr. Johnson?

A Yes, sir.

Mr. Fletcher: I have no further questions.

Exam. Hosmer: Any questions of Mr. Johnson by way of cross examination?

A Voice: My name is John E. Nightingale, of Washington, D. C.

Exam. Hosmer: All right. What is your question, sir?

Mr. Nightingale: During Mr. Johnson's testimony, I might say I have had 30 years' contact with the Railway Express Agency, and its predecessor company, and my father put in 40 years with the predecessor company, and I worked

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about 15 years for the Express Company.

In Mr. Johnson's testimony there is no specific reference to labor costs with relation to the condition of the company, and I believe in the New York office Mr. Johnson is reported as having said that 80 per cent of the company's operating costs are devoted to labor.

Is that right?

The Witness: That is about right.

Mr. Nightingale: My next question refers to operating expenses, and I have noted in your statement you commented on that a little bit.

As you testified the service has deteriorated in the last two years, and in the apportionment of expenses how do you expect to get around it, and how are you going to improve the service if you cut off all the help, how do you expect to get around it so you can call it quality express service and still cut your expenses to the bone and maintain your express service?

The Witness: Well, Mr. Nightingale, I think you have stated an objective which is certainly in the minds of the management under this new Agreement. In other words, you are asking me how we are going to be a great success. If I could give you a pat answer to that question right now it would be a miracle.

But, I am sure this agreement sets up arrangements that

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will provide opportunity and incentives which will help all the people in the Express Agency, and give them new hope and courage and confidence in their employment, and I fully believe we will get all the cooperation the people are humanly capable of giving, and I think you probably would have liked to have worked in that kind of an arrangement.

Mr. Nightingale: Thank you, sir.

Exam. Hosmer: Any other questions?

(No response.)

Exam. Hosmer: Apparently there are none.

You are excused, Mr. Johnson.

(Witness excused.)

Mr. Niebank: May this be off the record, sir?

Exam. Hosmer: Off the record.

(Discussion off the record.)

Exam. Hosmer: Come to order, gentlemen.

We have several statements, one by Mr. Fred Carpi, and one by Mr. W. A. Johnston, and it has been suggested they need not take the time to read their respective statements personally into the record.

Does anyone object to the statements being copied into the record without having been read from the stand?

(No response.)

Exam. Hosmer: Now, off the record.

(Discussion off the record.)

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Exam. Hosmer: Back on the record.

Let the record show Mr. Carpi's statement will be copied into the record, and be given the same force and effect as if and as though read by him.

FRED CARPI

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Niebank) Will you state your name and occupation for the record, sir?

A My name is Fred Carpi. I am Vice President-Sales of The Pennsylvania Railroad Company, and also a Director of the Railway Express Agency.

Q Do you have a statement to make, sir?

A Yes, sir.

The facts and circumstances leading to the consolidation of several separate express companies into one express carrier, and the ultimate acquisition of that single company by the American railroads are well known to the Commission and need not be repeated here. In brief, it need only be said that since 1929 the ownership of the nation's only express company, aside from the Southeastern Express Company which was merged into the Railway Express Agency in 1938, has been a joint enterprise of the American railroads. For the first 25 years of that ownership the railroads operated under one standard agreement. For three years prior to the expiration of the

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1929 contract I participated with several other railroad executives in studies, discussions and negotiations which led to the Standard Express Operations Agreement of March 1, 1954, which was approved by the Commission in Docket No. 31317, Express Contract 1954, 291 ICC 11. At the time the pooling features of that contract were presented to the Commission for approval I testified on behalf of all of the railroads. I then described some of the problems with which the railroads were faced in the handling of express traffic and outlined how the 1954 contract attempted to meet those problems. I indicated that competition from government parcel post service, air carriers, motor carriers and freight forwarders was then and would continue to be of such magnitude as to compel the Railway Express Agency, if it hoped to have any chance of survival, to operate in the most efficient and economical manner.

Operations have now been carried on under that contract for over 5 years, but some time ago it became apparent that without drastic revision and reorganization of the Agency it would not be economically feasible to continue its existence. In fact, it became clear that certain contractual changes would be necessary to permit the Agency to compete effectively with other small package transportation agencies.

Under the 1954 agreement withdrawal by individual railroads was permitted after December 31, 1958. Some small

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railroads withdrew at that time, and certain other railroads have indicated an intention to withdraw from the express contract at the end of 1959. Again as in 1952 and 1953, extensive studies, discussions and negotiations were begun in an attempt to discover if the Railway Express Agency had any real economic usefulness under present day transportation conditions. The studies and discussions covered a broad range of subjects. It soon became evident that what we were faced with was not the express problem alone, but merely one facet of the large problem which has been deceptively titled the "small shipment" problem. The difficulties attendant upon the transportation of small shipments have been examined and discussed by the Interstate Commerce Commission and almost every other group in the country that has any interest in transportation problems. To me it has always been astonishing that there are only three agencies in this country which even attempt to provide a complete small package service--the United States Post Office, the Railway Express Agency, and Railroad l.c.l. service--all of which have been doing it at terrific annual losses. For express the problem arises basically from its gradual evolution from a monopolistic premium service to a standby service besieged on all sides by competition, some of which is subsidized. That competition runs the gamut from the United States Government in its parcel post service to the highly specialized private competitor who

picks and chooses attractive traffic moving in heavy volume between high density points.

In all the railroad discussions the core of the Agency's difficulties was traced in large measure to the fact that it has not been run as an independent business. The present accounting provisions provide the Agency with a blank check to pay its expenses, with the railroads' getting what is left ove for line haul transportation. As a result, we discovered that many people, including some of the Agency's own personnel, looked upon the difference between what the Agency collected from the public and its own costs as something akin to a profi This attitude, of course, is based on the completely fallacious assumption that the line haul transportation of express is fre. Nothing could be further from the truth, for in fact the line haul transportation is an integral part of express business and is getting more costly every day.

In the course of our studies we even attacked the basic problem of whether or not the handling of express through one unified company was economically justifiable. However, the result of all this analysis was that we always ultimately came to the same conclusion--under present conditions one could do it better for all than each could do it for himself, provided certain changes were made in the Standard Agreement.

This naturally led to study and discussion as to what changes could be made in the Standard Agreement to make

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the Agency a successful enterprise in the public interest, and yet a profitable one for the railroads. The fundamental principle was that the Agency must be placed, insofar as possible, on an independent footing with normal profit and loss motivations and with freedom to conduct its operations in its own best interests. Following this principle the new contract was hammered out. In the interim the Agency management was instructed to make every possible economy in operation and, in our judgment, the efforts in this regard, thus far, have been quite successful.

Mr. Johnson, the President of the Agency, has outlined to you in some detail the changes which the new contract makes. I should like to comment on only three of the principle ones.

The first of these is intended to offset one of the major causes of disenchantment of the Eastern railroads with the present contract. It is no secret that one of the factors which touched off the intensive study and negotiation in recent months was the fact that the Eastern railroads believed that they were not receiving sufficient revenue for the service they were performing for express traffic. As the months progressed, it developed that the Eastern railroads were not alone in this dissatisfaction. This particular problem was highlighted in connection with less than carload express traffic which moves through three or more groups. Under the accounting provisions of the present contract the revenue from such traffic is divided

on the basis of a prorate factor constructed on the basis of the first-class rates in effect on August 20, 1953. Within that factor is contained an element designed to cover the Agency's cost of handling the traffic. However, on such movements there is relatively less Agency cost within the intermediate group, and this method of dividing revenue worked to the advantage of that group. As is true with many problems it was not necessary to find a completely new principle in order to solve this one. In the present agreement there is a provision for equalization of Agency shipment handling costs as between the various groups, and the new contract provides that during the transition period, when the accounting will be done on much the same basis as at present, a different equalization adjustment is to be made to provide a more equitable distribution of revenue on the traffic mentioned.

The second principal change, however, is probably the most important in the entire agreement and reflects the general tenor of our efforts to place the Agency in a position where it will succeed or fail on its own. The new Article 10 provides that the Agency will after July 1, 1961, pay for the transportation service it receives from the railroads on the basis of a fixed charge per car foot mile and ultimately in 1963 pn the basis of a fixed charge per car foot mile which, at least, meets the railroads' out-of-pocket costs. This is truly the biggest step which could be

taken to create an incentive and to make the Agency independent in that its personnel will then know what its full transportation obligations are. They will have to operate their company as any other independent business, that is with the necessary efficiency in their operations so that they can pay all their bills--including the cost of line haul transportation. This change combined with greater freedom given to the Agency in selecting its transportation media, which will be mentioned next, should, we sincerely hope, lead to the most efficient and economic operation which it is possible for the Agency to have.

The third change is that found in Article 2, Section 4. In the 1954 agreement an attempt was made to give the Agency greater freedom in routing its traffic by railroad. Formerly routing was controlled almost exclusively by the division of competitive traffic in a fixed historical period. The 1954 agreement retained former distribution as one factor but added the factor of overall efficiency as a guide to the Agency in selecting rail routes. However, after 5 years of operation under the 1954 agreement it now seems clear that such a limited freedom is not sufficient to meet the Agency's problems. Although the Agency was given greater freedom to route, the result was largely that so-called competitive traffic was still handled as a pool which was to be divided among the railroads.

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The new contract clearly spells out that the Agency shall have freedom to select any instrumentality of transportation subject to the single limitation of Board review of diversions from rail to other modes of transportation. This limitation is required because, whereas a particular diversion may appear to provide the possibility of benefit to the Agency from a short-range view, it ultimately might work a serious detriment to the Agency in the long run.

It should be noted that the general principle of freedom of routing and freedom of mode has been approved by all the railroads. We no longer have the concept of a pool of traffic to be divided along historical lines. The Agency is now to select whatever route or instrumentality of transportation it finds best. As already indicated, this factor combined with the new payment provisions will, in our judgment, lead to an express company which will be governed in its decisions by consideration of the best service to the public, consistent with the economies of the small package transportation business.

The changes in the Standard Express Operations Agreement are not regarded as sufficient in and of themselves to solve the present problem of the Express Agency. Mention has already been made of the program of economies which the Agency management instituted in order to bring total costs more nearly in line with total revenues. Of course, it is

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not surprising that those economies alone could not eliminate the railroads' out-of-pocket deficits from express service.

It was apparent that if we ever hoped to place the Agency on an independent footing, we could not do so immediately. In fact, even with the transition period provided in the new agreement, and during which the Agency will continue to operate with something in the nature of the present blank check arrangement, it was obvious that the Agency required additional revenues to give it some degree of financial stability while reshaping its operations toward the day when it would pay its own transportation bills. Hence, concurrent with the filing of the application for approval of the pooling features of the new contract, a new tariff was filed which provides for modest rate increases. It should be understood that this rate proposal is an integral part of the entire program which has been formulated for the continuation of the Agency. In fact, the acceptance of this program by many railroads, including my own, was premised and conditioned on the assumption that the rate increase would be obtained. In order to give such railroads an opportunity to withdraw should any of the elements was amended to permit withdrawal at the end of this year by the filing of a notice prior to September 30, 1959.

The increase was designed as a flat amount per 100 lbs.

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rather than a percentage increase in order to place a relatively lower percentage increase on the relatively less costly long haul traffic which is attractive to competitors. It should be understood that during the transition period mentioned, railroads will continue to bear out-of-pocket losses for handling express, but the rate increase was proposed more or less so that the shippers who desire the continuation of express service could meet the railroads part way in sharing a small portion of this burden.

There is another and equally important part of our overall program for reorganization and revitalization of the Express Agency. This part consists of an undertaking by the Agency personnel to review and study the entire express rate structure with the object of making it more realistically attuned to present day conditions of transportation competition. The Agency's present rates are constructed largely on the basis of scales related to mileage blocks. For example, the rate on traffic moving between Millersburg, Pennsylvania and Warsaw, Indiana is exactly the same as the rate on traffic moving between Harrisburg, Pennsylvania and Indianapolis, Indiana. While it does not necessarily follow that those rates should be different, one would think that with the varying conditions surrounding the two movements the rates would be different. We believe that all those varying conditions must be taken into account. For example, the small

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package traffic from Harrisburg to Indianapolis moves in large volume and therefore is attractive to competing services, such as the freight forwarders, truck lines, etc. On the other hand, the volume of traffic moving between Millersburg, Pennsylvania and Warsaw, Indiana is so light that virtually no one else is interested in it, and yet the Agency is required to handle it. The cost of handling such traffic is quite high because in many instances the movement from one sparsely populated area to another involves a pick-up, a movement via a truck route to a central Agency point, a transfer, the railroad movement, itself, with perhaps further transfers, and then the same costly pattern on the delivery end which has just been described on the pick-up end. Certainly, one would think that the rate structure would permit a lower rate between higher volume points, with higher rates between the points where the cost of handling the traffic is so high and where competitors are not interested in handling it.

In fact, it is just this situation which causes some shippers to see the value of a nationwide express company. They realize that it is no problem to ship between large cities, but it is when they attempt to move a package to or from the Millersburgs, Pennsylvania, the Warsaws, Indiana, the Clintons, Oklahoma, or the Abbievilles, South Carolina, and the thousands of other small cities and towns, that they realize the value of express service. Certainly, the

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Agency should be entitled to recover the cost of providing this needed service plus a moderate return on the gigantic investment which is required to provide such extensive service.

This does not necessarily mean that traffic moving between two large cities should be handled at low rates. The cost of performing the service should always be the yardstick, and in a high cost city like New York even the heavy volume can be outweighed by the cost of doing business. In such circumstances a relatively higher rate structure is necessary. In short, the point we are trying to make is that where small package traffic moves in heavy volume from one city to another the rate structure of the Agency should be sufficiently flexible to permit it to meet the competition to the extent that cost plus a reasonable return will permit.

It need only be added in conclusion that I have been in the transportation business too long to let my optimism overwhelm my better judgment. However, I firmly believe that the program we have outlined for the future of the express business provides the best possible chance for the continuation of a business which is as old as the railroads themselves. Certainly it will provide the best foundation for a national express company to find its proper place in the transportation market. I believe that the pooling of traffic, service and revenue which is provided for in the

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new Standard Express Operations Agreement is in the public interest, and I strongly urge that the Commission approve it.

Exam. Hosmer: Are there any questions in the nature of cross examination?

(No response.)

Mr. Donley: I have a question, but certainly not cross examination, sir.

Exam. Hosmer: All right.

Q (By Mr. Donley) On page 8, you make reference to the time it might take to bring all these readjustments about.

We have in the pottery business in particular a great deal of confusion on packing and things that may go to the operation of a plant. These other places I am speaking about are new plants which are being built.

I am not trying to make a speech, Mr. Examiner, but it is a surprise to find how they are holding up to determine what is going to be the best method of small operations which are involved here.

Could you, Mr. Carpi, give me some idea of when we might get some actual information particularly with regard to service?

A This thing is in the lap of the Commission. If the Commission approves this pooling arrangement, and also the tariff for increased rates, I can very confidently say by

W37 the first of the year you will see quite a change for the better in the way of service, and everything else. The Railway Express Agency management is going to really hit the ball hard here.

Mr. Donley: Mr. Examiner, I represent the largest organization I think there is that makes grave markers, and all of those fellows have a community of interest in that they ship them in large quantities and some days there would be from 300 to 400 shipments all over the country.

Now, a grave marker is something you can't warehouse. We don't know when you guys are going to die, but if we can get some information we very badly want it in order to make plans for future operations.

The Witness: I think you can reasonably assume we will go right ahead. We certainly have something we are striving for, Mr. Donley.

Mr. Donley: Thank you, sir.

Q (By Mr. Augello) I presume, sir, you are familiar with the quality of the service performed by the railroads in the territory, generally speaking?

A Generally, yes.

Q Would you say there is much difference between the quality of that service, as compared with the quality of the express service?

A I thought we were talking about express service.

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Q The difference between the quality of express service and rail LCL service.

A Why, the express service is much more expeditious than rail LCL service.

Q Would that prevail between principal points, say, between New York and Chicago and New York and Philadelphia?

A Between New York and Chicago I would say the margin between express and LCL there is a little less, generally, but I think express is much faster.

Q Has any consideration been given to consolidation of LCL service with express service, sir?

A Oh, yes. It has been given intensive consideration not only by our company, but I think by many other railroads, but as far as we are concerned we have come to the conclusion it is impractical.

Q You say it is impractical?

A Yes.

Q Can you tell us some of the reasons why, sir?

A There are quite a number of reasons, the first of which is that you would have to have a different type of vehicle.

The average weight of LCL is about 500 pounds, whereas the average weight in express is 50 pounds.

Q Are you speaking of the motor vehicles used in the service?

A Yes, precisely.

Then, we have the fact that our LCL is handled in freight

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service, and those facilities are, or should be near the freight yards, whereas the express facilities would be nearer the passenger station.

Q Would you concede, though, that rail LCL presently is one of the main competitive factors in connection with the express company's service, is that right?

A No. I do not concede rail LCL is as much a competitor with express as LCL. LTL is much more so. If there is competition, it is there in a restricted sense.

Q Has any consideration be given to making an allowance to any shipper or receiver who perform their own pick-up or delivery service on express traffic?

A There has been consideration of that in the past a number of times, and I think it may receive further consideration in the future.

Q One of the provisions of the new contract is that the Agency may divert express traffic from the rails to another mode of transportation.

Was it contemplated under that provision that diversion would be to rail LCL service?

A Well, it would mean to motor transportation. I thought you meant by motor transportation with respect to other modes of transportation.

Q I am trying to determine what the railroads mean by diversion of the traffic.

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A The Express Company under this agreement would have the right to use any type of transportation which would give it the best service, whether rail, truck, or freight forwarders, or any other type.

Q There has been substantial diversion to freight train service of express, has there not?

A No, not much.

Q But, there has been some?

A There has been some, certainly.

Q Do you expect that trend to continue?

A No, I do not.

Q In spite of the new legislation concerning discontinuance of passenger trains?

A I do not think that will have any appreciable effect because we are going to have passenger service. We are talking more of commutation trains which do not carry express.

Q My interests are primarily with respect to perishable express traffic, and we are of course interested in continuance of express service particularly for express traffic, and can you tell us anything as to plans for the improvement of express service with respect to perishable traffic, sir?

A No. I'm sorry that I cannot help you much on that.

You could have asked that question of Mr. Johnson because he probably could have given you some valuable information.

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Mr. Augello: Thank you, sir.

Exam. Hosmer: Any other questions of Mr. Carpi?

(No response.)

Exam. Hosmer: If not, you are excused, sir.

The Witness: Thank you.

(Witness excused.)

Mr. Niebank: I would now like to call Mr. John M. Budd to the stand.

JOHN M. BUDD

was sworn and testified as follows:

DIRECT EXAMINATION

Mr. Niebank: Mr. Budd's testimony has been agreed will be copied into the record as if and as though read by Mr. Budd personally.

Exam. Hosmer: All right.

My name is John M. Budd. I am President of Great Northern Railway Company and a Director of the Railway Express Agency, Inc. For the past several months, I have participated in the studies which have culminated in the Contract submitted with this Application. I appear today as a representative of the railroads that serve the territory included in the Western and Mountain Pacific groups as those groups are described in the Contract. The railroads I represent support the Application involved in this proceeding. We respectfully urge that the Commission

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extend such approval of the pooling aspects of the Contract as is required by Section 5(1) of the Interstate Commerce Act.

For many months the Directors of the Railway Express Agency have been faced with the distinct possibility that the Agency would have to be liquidated after December 31, 1959.

The Directors, together with the officers and employees of the Agency, have worked diligently to devise some plan which would stave off the liquidatioin which nobody wanted. Many different proposals were advanced and considered very carefully. For various reasons one after another of these proposals was rejected until finally the plan based to a large extent on the Contract here in question was brought forward.

This Comtract has been accepted and approved by all of the signatory carriers. It is fair to say that it is not entirely satisfactory to everyone concerned and has been agreed to reluctantly by some carriers. Nevertheless it is the opinion of all who have been close to the problem, myself included, that this is the only Contract which could have mustered the necessary support of the railroad industry.

The roots of the very serious situation in which the Railway Express Agency has found itself grew from methods of operation and accounting which were altogether workable and satisfactory when they were established more than thirty

years ago. But as time passed and inevitable changes took place in our transportation pattern, these old Agency methods of operations and accounting became a serious burden and have almost resulted in the extinction of the Agency.

I have in mind three items in particular. First, since the railroads took over ownership of the Agency in 1929 its accounts have never reflected rail costs involved in the tdansportation of express matter. The Agency has been tied to a system which kept it from showing a profit or a loss. It has been denied the discipline, and the benefit, of the ordinary profit and loss statement.

Rail costs, however, could not be obscured forever and finally it became apparent that many, perhaps in fact a large majority, of the railroads were not meeting even their out-of-pocket costs of transporting express from the revenues distributed to them by the Agency. The situation became so critical that a number of railroads concluded that they could tolerate it no longer.

Second on the list of the Agency's principal problems is the factithat it has been tied to the railroads and to historical routings. As modes of transportation in competition with the rails have developed, the Agency has been denied access to them. In numerous cases this has resulted in uneconomic transportation, particularly in congested areas where there are many short-haul shipments. This pattern worked

to the advantage of no one and has been a distinct disadvantage to the Agency.

At the same time the Agency has been denied in a large measure the right to choose between competing rail carriers on the basis of service, and in that way has been denied an opportunity to improve its operating efficiency. This has been the result of adherence to historical routing. The unrealistic character of this restriction, with its attendant injurious effects on the efficiency and service of the Agency, requires no elaboration.

The third and last of these points to which I want to direct my attention involves still another historical -- but to many, at least -- unrealistic aspect of the workings of the Agency:

As I have already indicated, and as the Commission well knows, the country is divided for Agency accounting purposes, into four Groups: Eastern, Southern, Western, and Mountain Pacific. In the case of traffic which moves from one Group through a second Group (and in a few cases through a third Group) into its destination Group, the principal express (as distinguished from rail) services are performed only in the origin and destination groups.

These express services consist for the most part of pick-up and delivery and terminal handling. The expenses of these express services for such hauls have heretofore been

charged to the origin and destination Groups, with only a minute portion being borne by an intermediate Group in spite of the fact that such Group shares in the revenue from such a movement on the same basis as the origin and destination Groups.

To compensate for what many have regarded as the inequity in this situation, provision has been made in the new Contract for a different allocation of express expenses on those movements through three or more Groups so that some part of them will be borne by the intermediate Group or Groups.

In this connection I must advise that a number of railroads in the Western Group, who obviously will be the ones most affected by the change, agreed only reluctantly. They agreed on the ground that this is a temporary emergency measure designed to help save the Agency.

In this connectionil might say that it was inevitable that not all parties to the new Contract would be enthusiastic about all of its provisions. With the requirement of unanimity among so many railroads, the wonder is that there has not been more dissatisfaction expresed. That there has not been -- that we have a new contract -- is, I think, to the distinct credit of the industry.

I do not propose to detail for you the remedies the railroads have agreed to apply in these three critical areas. Others have already done so and the details are set out clearly

in the Application itself.

However, I would like to talk briefly and generally about the car-foot-mile rate provided for, and about the freedom of mode and routing:

As I see it, the most important feature of the car-foot-mile rate plan comes into operation on January 1, 1963. On and after that date the Agency will buy transportation at a rate directly related to out-of-pocket costs of the railroads, and will have a chance to make a profit. This plan will serve at least three purposes. Agency accounts will reflect for the first time rail costs so that it will know whether or not it is a profitable operation; the railroads will be compensated on a basis calculated to return them their out-of-pocket costs; and the Agency may be able to accumulate funds to help finance a badly needed program of capital expenditures.

After some experience under that arrangement, coupled with the projected overhaul of the express rate structure which others here have mentioned, we will all be in a position to evaluate whether the small package business can pay its way. If the Agency's revenues are not sufficient to enable it to buy transportation at a rate tied to rail costs, then we must take another look at the situation. In any event, the Agency, under the new Contract, is to have an opportunity

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to prove itself, an opportunity which it has never before enjoyed.

I do not mean to indicate that the transition period from October 1 of this year to January 1, 1963, is not significant, for, of course, it is critically important. Much of the future of the Agency will depend upon what is accomplished in this interim period.

During that time we would expect to see impressive results from the Agency's new freedom to choose between competing railroads and between competing modes of transportation. We feel that this new freedom opens the way to countless improvements in service to the public and to great economies in operations of the Agency. As I have previously indicated, we expect to see a great deal of short-haul traffic which now moves by rail at high cost handled by motor carriers at less cost. We expect that competing railroads, confronted with the Agency's right to choose its own routes, will strive to improve their service in order to increase or retain their express traffic. In some instances we expect that it may be possible for the Agency to utilize improved low-cost rail freight service.

We cannot, of course, foresee at this time the pattern which will ultimately emerge. Certainly, the railroads will continue to be the most important single factor in the movement of express--in passenger and freight service. At

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the same time, the Agency will be free for the most part to select its instrumentalities of transportation on the basis of economics and service rather than artificial rules which as often as not have proved uneconomic and inefficient.

In this connection I should make it clear that the express-carrying railroads will not be hamstrung in the competitive picture before us. Whenever the Agency proposes to divert traffic to another mode, any affected railroad may, if it wishes, negotiate with the Agency for rates lower than those which would otherwise be applicable. All of this cannot but help the Agency and the shipping public. I am convinced the Contract submitted with this application will be in the interest of better service to the public and of economy of operation, and will not unduly restrain competition.

Before closing my statement I would like to touch briefly upon another factor of critical importance to the future of the Railway Express Agency not reflected in this Application. The people at the Agency have been working diligently to streamline its operations and reduce expenses as far as possible consistent with good service to the public. Under the leadership of its new President, energetic and capable William B. Johnson, the Agency has already registered impressive improvements. A good deal more will be accomplished in the months and years ahead.

The railroad industry has great confidence in Mr. Johnson and his people. We are anxious that they have the

opportunity to succeed which the new Contract now before the Commission will afford them.

Exam. Hosmer: If you all have had an opportunity to read Mr. Budd's statement and have no questions to ask, he is excused.

(Witness excused.)

Mr. McLean: I would like to call Mr. Johnston.

W. A. JOHNSTON

was sworn and testified as follows:

DIRECT EXAMINATION

Mr. McLean: Mr. Johnston's testimony has been distributed to all the people in the hearing room, and I believe everyone has had an opportunity to read it, and I would like to ask that it be copied into the record as if and as though it were read by Mr. Johnston personally.

Mr. Johnston: To identify myself for the record my name is W. A. Johnston, residence Flossmoor, Illinois, business address 135 East Eleventh Place, Chicago 5, Illinois. I am President of the Illinois Central Railroad Company and hold the position of officer or director of a number of other companies including, since 1948, the position of director of Railway Express Agency, Inc. In this latter capacity I represent the Illinois Central and am one of the four directors representing the Southern Group of railroads.

I have actively participated in all the recent deliberations relating to the future of the Agency. In addition, Mr. Frank Martin, Vice President and Comptroller of the Illinois Central and Chairman of the Accounting Committee of the Agency, has devoted a very substantial portion of his time to solution of the many problems that have confronted us in the last several months. The Illinois Central and all the Southern railroads whom I represent have worked desperately to find a solution acceptable to the public, the Agency, the railroads and this Commission.

From the beginning the Southern railroads have consistently and strenuously urged that continued operation under railroad ownership should be our goal. Nevertheless, in an effort to reach common ground, we considered numerous plans running from liquidation to purchase and operation of the Agency by outside interests. At the same time we progressed proposals in accounting practices and otherwise having as their objective greater economy in operation which we felt essential to survival of the Agency.

The important business interests that exhibited a willingness to risk their private capital in this enterprise performed a great service for the Agency. Their action restored confidence in some quarters where it had been on the wane. It did much to convince some that the Agency could be revitalized and that with some needed changes it could be turned into an economically sound operation. If

451 someone else could see a real potential of profitable operation the hope was rekindled that under railroad ownership the same or a better result could be achieved.

It was decided we should do something immediately about a successor for the head of the Agency who was approaching retirement age because the new program depended upon having a dynamic driving force over the next several years. We were fortunate to have William B. Johnson made available. He has been closely associated with Agency problems for the last several years and he was ideally qualified to head up our overall program--greater economy in operation.

It was absolutely essential that to survive we accomplish just as quickly and prudently as possible substantial reductions in expense. We are continuing to actively explore new methods to make this a more economic operation. As other witnesses have said we intend to make the Agency more conscious of the profit motive which must be associated with any business enterprise to justify its existence.

There are limitations of course beyond which you cannot go in reducing expenditures without producing an unfavorable effect on revenue of the Agency and its railroad owners and upon the service which is to be performed. With that in mind tariffs have been filed to permit an immediate increase in rates necessary for survival until a careful survey of the entire express rate structure can be completed

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and a more comprehensive program submitted to the Commission. Mr. Johnson and Mr. Corpi have already dealt with this subject quite extensively and I will do no more than say I am in complete accord with them.

This brings me to the new Standard Express Operations Agreement of October 1, 1959 containing the pooling arrangement submitted to this Commission for approval. The new agreement represents months of negotiations to formulate a plan and vehicle which would be acceptable to the Agency, the railroads participating in the pool, the public and this Commission. Out of it will emerge, we are confident, a healthy Railway Express Agency.

Mr. Johnson has dealt extensively with all of the new ideas incorporated into the new arrangement and there is not too much that I can add except by way of emphasis on a few of the highlights which I deem particularly significant and which I believe justifies an attitude of optimism. The terms of the new agreement will make available to the Agency freedom to route its traffic unencumbered by previous restraints based upon historical routing and confer upon it freedom to select any mode of transportation to be used whether railroad, water carrier, motor carrier, airline or otherwise. This independence of action will enable the Agency to become a real competitor in the small package field and that assures better service to the public.

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To contribute towards the solution of a problem relating to expenses incurred at points of origin and destination a change is being made immediately in the redistribution of Agency expenses in connection with shipments moving through three or more groups. This is designed to produce a more equitable sharing of Agency costs and to give some immediate relief to the origin and destination groups. This has been mentioned by other witnesses and I refer to it merely to make clear one point. This adjustment will favorably affect the Eastern and Mountain-Pacific groups and the provision for this adjustment alone, together with surcharges sought only by the Eastern and Mountain-Pacific groups, as well as the active part that the Southern group of railroads has taken in attempting to find a solution to the problem, might leave the inference that we in the South found ourselves in a favorable situation on other than carload express traffic. That certainly is not correct. We have been much concerned with the deterioration in our situation. Payments to us must be increased to place our express service on a self-sustaining basis. It is our belief, however, that improvements under the new arrangement and the increased potentialities of the Agency in serving the public under rates that will be made compensatory will produce the relief that all groups require for economic operation. The efforts made by the South to help devise an arrangement and an

agreement for continuation of the Agency under railroad ownership that would be acceptable to all other groups, was dictated not because of our satisfaction with the past financial returns from such service, but because of our confidence in the future possibilities of Agency operations under the terms and provisions such as now comprehended in the new agreement.

We should reach our goal when, commencing with January 1, 1963, the Agency and the railroads will begin to purchase and sell rail transportation for other than carload express traffic on a basis of car-foot mile rates which will assure the railroads of a return of at least their out of pocket costs based on a uniform formula. At the same time the Agency will have the opportunity and challenge to operate at a profit.

We should never again be faced with the near stalemate experienced in the last several months because the new agreement will permit amendments to be made with the consent of the Rail Companies representing not less than 85 per cent of the total assigned car-foot miles of all Rail Companies parties to the agreement. The present agreement requires unanimous consent for an amendment which the carriers through experience have learned is most difficult of attainment.

Prompt approval of this application and the permitting of the rate increases to become effective without suspension

will usher in a new era in the handling of express traffic by the Agency. It will justify the patience with which the Commission and Congress has waited for the Agency to settle its problems. The pooling of traffic, service and revenue provided for in the new arrangement submitted to the Commission for its approval is, in my opinion, in the interest of better service to the public and economy of operation and will not restrain competition. It warrants the approval under Section 5(1) of the Interstate Commerce Act requested of the Commission.

Mr. McLean: I now offer Mr. Johnston for cross examination.

Exam. Hosmer: Any questions of Mr. Johnston?

(No response.)

Exam. Hosmer: Apparently there are none and you are excused, sir.

(Witness excused.)

Exam. Hosmer: Are there any other witnesses for the Applicants?

(No response.)

Exam. Hosmer: Is there any evidence to be offered by Intervenors?

(No response.)

Exam. Hosmer: Apparently not.

In view of the desire of the Applicants to make this

agreement effective October 1st, I understand they are agreeable to dispensing with a proposed report, and procedural steps of that kind, and also wish to waive the filing of briefs or requests for findings too?

Mr. Fletcher: That is correct, Mr. Examiner.

Exam. Hosmer: Very well.

If there is nothing further to be offered the hearing is concluded.

(Whereupon, at 11:00 o'clock a.m., the hearing in the above-entitled matter was closed.)

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Finance Docket
No 20812
REA Exhibit

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 20812

Application of Railway Express Agency, Incorporated under Sections 20a and 214 of the Interstate Commerce Act for Authority to Issue Securities.

Paul R. Duke
R. J. Fletcher
W. D. McLean
C. George Niebank, Jr.
Attorneys for Applicant

New York, New York
August 31, 1959.

APPLICATION

of

RAILWAY EXPRESS AGENCY, INC.

- - - - -

Under Section 20a and Section 214 of
the Interstate Commerce Act, for
authority to issue promissory notes
in the aggregate amount of $27,637,053.80
bearing interest at the rate of 5%.

- - - - -

TO THE INTERSTATE COMMERCE COMMISSION:

Railway Express Agency, Incorporated, hereinafter referred to as Applicant, hereby makes application under Section 20a and Section 214 of the Interstate Commerce Act for authority to issue non-negotiable promissory notes in the aggregate principal amount of $27,637,053.80 bearing interest at 5%, to be delivered to carriers by railroad in evidence of Applicant's indebtedness to said carriers arising from loans heretofore made by such carriers to

Applicant and with sinking fund requirements with respect thereto, all as hereinafter more fully described.

I

Pursuant to the requirements of Part 56 of the Commission's order of August 9, 1946, as amended (49 CFR 56.1), Applicant shows:

(a) The full name and correct business address of the Applicant are:

Railway Express Agency, Incorporated
219 East 42nd Street
New York 17, N. Y.

(b) Applicant is a corporation organized under the laws of the State of Delaware on December 7, 1928.

(c) Applicant is a corporation organized for the purpose of engaging in the transportation of property by express on railroads throughout the United States, and in Canada and Cuba, and is also a common carrier by motor vehicle.

(d) Applicant operates in all of the fifty states of the United States and in the District of Columbia, Canada, and Cuba.

(e) This application seeks an order of this Commission pursuant to Sections 20a and 214 of the Interstate Commerce Act authorizing the issuance by the Applicant of promissory notes in the aggregate principal amount of $27,637,053.80, representing the amount of

existing indebtedness of the Applicant to the prospective payees of the notes heretofore carried by Applicant as an open account on its books. This indebtedness has been accrued pursuant to loans heretofore made by the prospective payees of the notes, proposed to be issued pursuant to the authority herein sought, and has been considered and referred to in the reports of this Commission, Securities and Acquisition of Control of Railway Express Agency, Inc., 150 ICC 423 (1929), and Railway Express Agency, Inc., Notes, 230 ICC 478 (1938).

Each note will be denominated "Promissory Note", will be non-negotiable in form, will be in a principal amount equal to the aggregate amount of the loans from the railroad to which it is issued, and will bear interest on the unpaid principal amount thereof at the rate of 5% per annum to be payable semi-annually on each April 1, and October 1. The notes will be subordinate to the obligations of the Applicant to Morgan Guaranty Trust Company of New York and to The New York Trust Company, Agent, represented by notes issued by the Applicant pursuant to the authorization of the Interstate Commerce Commission in finance dockets numbers 18674, 18774, 18984, 19961 and 20264.

The notes will be dated October 1, 1959, and are to become due and payable in full on December 31, 1973. They will provide for the right of prepayment, in whole or in part, without premium, provided, however, that each such principal prepayment shall, unless made from the sinking fund referred to below, be paid prorata to all holders of such notes and shall be made in an aggregate sum of not less than $500,000. Maturity can be accelerated by bankruptcy, dissolution or liquidation of the Applicant.

A sinking fund shall be established for the retirement of the principal amounts of such notes commencing with the year 1963. One the first day of May of that and subsequent years the Applicant will pay into such fund 10% of its net income earned in the year next preceding, such net income to be determined only after all expenses taxes, and distributions to carriers by railroad, if any, have been made. When sinking fund accumulations shall reach the sum of $50,000. or more, the fund shall be applied on the following July 1 to the payment of such amount of the notes as shall be tendered to Applicant at less than par, or, in the event no tenders are received to a prorata payment on all notes.

The notes will also contain a provision that no dividends shall be declared or paid on Applicant's capital stock so long as any of the notes are outstanding.

(f) It has been determined to issue notes of the Applicant in order to prescribe a method and schedule for the retirement of such indebtedness, which is fully within lawful corporate purposes and compatible with the public interest.

The evidencing of the open account indebtedness by the notes proposed to be issued pursuant to the authority herein sought, and the inclusion in such notes of provisions relating to the method of retiring such indebtedness are consistent with the proper performance by the Applicant of its service to the public, will not impair its ability to perform that service and is reasonably necessary and appropriate for such purposes.

(g) The notes proposed to be issued pursuant to the authority herein sought will be issued at their face amount to evidence an equal amount of indebtedness at present represented only by credit entries on Applicant's books, to each of the prospective payees thereof, the denomination of each note to be in the full amount of the indebtedness to the individual payee.

No expense will be incurred in connection with the issuance of such notes other than incidental expenses relating to their preparation and distribution.

(h) The notes to be issued pursuant to the authority herein sought, will be issued to the following carriers by railroad in the respective amounts shown:

Name of Carrier	Amount of Note
Alabama Great Southern Railroad Company(The)	$ 33 217.26
Atchison, Topeka and Santa Fe Ry. Co. (The)	1 330 114.81
Atlantic Coast Line Railroad Company (The)	578 311.25
Baltimore and Ohio Railroad Company (The)	1 185 537.40
Bangor and Aroostook Railroad Company	28 915.79
Boston and Maine Railroad	665 057.82
Burlington-Rock Island R.R. Co.	28 915.79
Canadian National Railway Company	173 493.22
Central of Georgia Railway Company	173 493.21
Central R.R. Co. of New Jersey(The)	318 070.61
Chesapeake and Ohio Ry. Co. (The)	491 564.64
Chicago & Eastern Illinois R.R. Co.	144 577.35
Chicago,Burlington & Quincy R.R.Co.	780 719.38
Chicago Great Western Ry. Co.	115 662.42
Chgo.,Milw.,St.Paul & Pacific R.R. Co.	751 804.41
Chgo.,Rock Island and Pacific R.R. Co. (The)	636 142.03
Cinn.,New Orleans and Texas Pac.Ry.Co. (The)	49 826.31
Cleve., Cinn.,Chgo. and St.Louis Ry. (The)	433 733.00
Clinchfield Railroad Company	28 915.79
Colorado and Southern Ry. Co. (The)	86 746.60
Delaware and Hudson Railroad Corporation	144 577.35
Delaware, Lackawanna & Western R.R. Co.	404 817.20
Denver and Rio Grande Western R.R. Co.	173 493.15
Duluth, So.Shore and Atlantic Ry. Co. (The)	28 915.79
Erie Railroad Company	665 057.82
Florida East Coast Railway Company	173 493.21
Great Northern Railway Company	433 733.01
Gulf, Mobile and Ohio Railroad Company	173 493.21
Illinois Central Railroad Company	838 551.02
Kansas City Southern Railway Company	86 746.60
Lake Superior & Ishpeming Railroad Co.	28 915.79
Lehigh Valley Railroad Company	289 155.62
Louisville & Nashville Railroad Company	693 973.67
Maine Central Railroad Company	144 577.35
Michigan Central Railroad (The)	896 381.79
Minneapolis & St. Louis Ry. Co. (The)	57 830.79
Minneapolis, St.Paul & Sault Ste Marie R.R.	86 746.60
Missouri-Kansas-Texas Railroad Company	346 986.41
Missouri Pacific Railroad Company	578 311.25
Monon R.R.	86 746.60
New Jersey and New York Railroad Co.	28 915.79
New York Central Railroad Company	2 775 892.02
New York, Chicago and St. Louis R.R. Co.	115 662.42
New York, New Haven and Hartford R.R. Co.	1 272 284.02
New York, Susquehanna and Western R.R. Co.	28 915.79
Norfolk and Western Railway Co.	260 239.81
Norfolk Southern Railway Co.	28 915.79
Northern Pacific Railway Co.	346 986.41

Name of Carrier	Amount of Note
Pennsylvania Railroad Company	$3 643 358.84
Reading Company	346 986.41
Richmond, Fredericksburg & Potomac R.R.Co.	202 409.02
St. Louis-San Francisco Railway Co.	404 817.19
St. Louis Southwestern Railway Company	57 830.79
St. Louis Southwestern Ry. Co. of Texas	57 830.79
Seaboard Air Line Railroad Co.	491 564.08
Southern Pacific Company	1 330 114.80
Southern Railway Company	315 566.92
Spokane, Portland and Seattle Ry. Co.	28 915.79
Texas and Pacific Railway Co. (The)	231 324.01
Union Pacific Railroad Co.	722 888.62
Virginian Railway Company	28 915.79
Wabash Railroad Company	346 986.41
Western Maryland Railway Company	28 915.79
Western Pacific Railroad Company	57 830.79
Western Railway of Alabama (The)	28 915.79
Wisconsin Central Railway Company	86 746.60
Total	$27 637 053.80

No contract, underwriting or other arrangement will be made in connection with theproposed issue other than the contract to be undertaken in accordance with the terms of such notes.

(i) Full corporate authority for the issuance of the notes and for the filing of this application has been given by the board of directors at the meeting thereof held at Chicago, Illinois, on July 15 and 16, 1959, at which appropriate resolutions were adopted. The name, title and address of the president of the Applicant who has, by the aforementioned resolution, been authorized to sign, verify and file this application, are:

Mr. William B. Johnson
President
Railway Express Agency, Inc.
219 East 42nd Street
New York 17, N. Y.

(j) The name of counsel for the company to whom correspondence in regard to this application may be addressed is:

Mr. R. J. Fletcher
Vice President and General Counsel
Railway Express Agency, Inc.
219 East 42nd Street
New York 17, N. Y.

II

The following required Exhibits (49 CFR 56.2) are attached hereto and made a part hereof:

As Exhibit 1, a certified copy of Applicant's By-Laws with amendments to date (filed with the original only). A copy of Applicant's Certificate of Incorporation was filed with the application in Finance Docket No. 12242, Railway Express Agency, Incorporated, Notes, and is hereby incorporated in this application by reference.

As Exhibit 2, certified copy of the resolution of Applicant's Board of Directors authorizing the proposed issue of notes and authorizing the filing of this application.

As Exhibit 3, opinion of counsel with respect to the lawfullness of the proposed issuance.

As Exhibit 4, a statement with reference to the scope of Applicant's operations.

As Exhibit 5, form of note proposed to be issued.

As Exhibit 7, a verified copy of Applicant's general balance sheet, as of the latest practicable date.

As Exhibit 8, a verified copy of Applicant's income

and profit and loss statement for the current calendar year to the last available date. A copy of such statements for the last calendar year is on file with the Commission.

As Exhibit 12, a statement containing a description of the existing obligations to be discharged by proposed issue of notes.

Exhibits 6, 9, 10, 11, 13 and 14 are omitted as they are not applicable.

WHEREFORE, applicant prays that an order will issue from the Interstate Commerce Commission authorizing applicant to issue and deliver the securities as described hereinabove.

Respectfully submitted,
RAILWAY EXPRESS AGENCY, INCORPORATED
By /s/ William B. Johnson
President

State of New York)
) ss.:
County of New York)

William B. Johnson, being duly sworn, deposes and says:

That he is the President of Applicant, Railway Express Agency, Incorporated, who executed the foregoing application; that he has read such application and knows the contents thereof; and that the same are true as stated.

/s/ William B. Johnson

Subscribed in my presence and sworn to before me, by the affiant above named this 31st day of August, 1959.

/s/ Marcus M. Curry
Notary Public

(SEAL)

Exhibit 2

I hereby certify that at a meeting of the Board of Directors of Railway Express Agency, Incorporated, duly called and held in Chicago, Illinois, on July 15 and 16, 1959, a quorum being present, the following resolution was adopted:

RESOLVED, That, subject to such approval of public authority as may be required by law, the Company issue non-negotiable promissory notes in an aggregate principal amount not to exceed $28,591,266 in payment of outstanding advances made by certain railroads to the Company, the note to be issued to each such railroad being in a principal amount equal to the amount of advances from such railroad as shown on the books of the Company, provided, however, the notes to be issued to railroads which have withdrawn from the Standard Express Operations Agreement or which will withdraw on January 1, 1960, shall be issued after the adjustments provided in Section 4 of Article 17 of such agreement have been made, and shall be equal, in principal amount, to the outstanding advances of such railroads after such adjustments; and

RESOLVED FURTHER, That the aforesaid notes shall mature at such times and bear interest at such rate as may be approved by the Company's Finance Committee; and

RESOLVED FURTHER, That William B. Johnson, President, Robert C. Hendon, Vice-President, and Chester J. Jump, Vice-President, be and they hereby are, and each of them individually hereby is, authorized to execute and deliver on behalf of Railway Express Agency, Incorporated, non-negotiable promissory notes in accordance with the foregoing; and

RESOLVED FURTHER, That the aforesaid William B. Johnson, Robert C. Hendon, and Chester J. Jump, be and they hereby are, and each of them individually hereby is, designated and authorized as the executive officer to make, sign, verify and file with the Interstate Commerce Commission an application for authority to issue non-negotiable promissory notes as described in the foregoing resolutions.

/s/ C. A. BRANNAN

Secretary

(SEAL)

Exhibit 3

OPINION OF COUNSEL

In my opinion, the issue of notes with respect to which this application is made is for a lawful object within the applicant's corporate purposes and is compatible with the public interest and will be legally authorized and valid if approved by the Interstate Commerce Commission.

Special reference is made to:

Article Third, Section 11 of applicant's Certificate of Incorporation which provides, among other things, that applicant may borrow money for any of the purposes of the corporation and issue bonds, debentures, notes or other obligations therefor and secure the same by pledge or mortgage of any part of the corporation's property.

Article III, Section 4 of the applicant's By-Laws which provides, among other things, that the Board of Directors may exercise all powers of the corporation which are not by statute or by the Certificate of Incorporation or by the By-Laws directed or required to be exercised or done by the stockholders. There is no requirement as to stockholder action with reference to the issue of notes contained in applicable statutes, or the Certificate of Incorporation or By-Laws of applicant.

/s/ R. J. Fletcher
Vice President & General Counsel

Exhibit 4

Applicant is engaged in the transportation of property by express on practically all passenger-carrying railroads in the United States and on many other railroads and truck lines as well. It also operates with its own employees approximately 450 motor carrier routes distributed throughout the United States. All of such routes are short and most of them have been initiated in substitution for passenger train service which has been discontinued. The certificates for practically all routes contain a condition limiting the express matter carried over them to that which has had a prior or will have a subsequent rail movement.

Applicant is also engaged, with the authority of the Civil Aeronautics Board, in the transportation of air express on all air lines in the United States certificated by said Board.

EXHIBIT 5 - Proposed Form of Note.

RAILWAY EXPRESS AGENCY, INCORPORATED

PROMISSORY NOTE

October 1, 1959.

The undersigned, Railway Express Agency, Incorporated a corporation organized and existing under and by virtue of the laws of the State of Delaware (herein called Agency), for value received, hereby promises to pay, on or before December 31, 1973, to _____, $_____ in lawful money of the United States of America, subject to the terms hereinafter stated, with interest from the date hereof on the unpaid principal in like money at the rate of five per cent (5%) per annum, payable semi-annually on the first day of April and October. This note is issued, delivered and accepted by the payor and payee herein upon the following terms and conditions:

1. The principal amount hereof represents the total current amount of open account indebtedness owed by the Agency to the payee herein on the date hereof and acceptance of this note shall be deemed full and complete satisfaction of such open account indebtedness. This note constitutes one of 66 similar notes in the aggregate principal amount of $27,637,053.80, all representing open account indebtedness as aforesaid.

2. This note is non-negotiable and payment of the principal amount thereof made to the payee herein shall constitute full and complete satisfaction of the indebtedness represented hereby unless the Agency shall have received from the payee 30 days written notice of any assignment or other transfer of said note in which event payment of the principal amount hereof to the assignee or transferee of said note shall constitute full and complete satisfaction of the indebtedness represented hereby.

3. The obligation of this note is and will remain subordinate to the obligation of Agency to Morgan Guaranty Trust Company of New York under

the Loan Agreement dated August 25, 1958, as now and hereafter amended, between Agency and Guaranty Trust Company of New York and the note dated August 25, 1958 issued under said Loan Agreement in the original principal amount of $7,000,000 and to any and all indebtedness of Agency represented by notes issued to The New York Trust Company, Agent, pursuant to the authorization of the Interstate Commerce Commission in Finance Dockets Nos. 18674, 18774, 18984 and 19961, so long as such obligation and indebtedness shall remain outstanding.

4. Agency hereby obligates itself to establish a sinking fund for the retirement of the principal amount of this and all similar notes, commencing as of the first day of the year 1965. Payments into the sinking fund shall be made on the first day of May, 1965 and on the same date in each subsequent year to and including the year 1973. The payments shall be in such amounts as shall represent ten per cent (10%) of the net income of the Agency for the calendar year next preceding the year in which such payments are made. Such net income shall be that income remaining after provision for payment of all expenses and taxes, and distributions, if any, to carriers by railroad under Article 10, Section 2 (f) of the Standard Express Operations Agreement effective October 1, 1959.

5. It is a further condition with respect to the establishment of the sinking fund hereinabove described that when on any May 1 the total amount of such fund amounts to $50,000.00 or more, and the Agency is not in default on its obligation and indebtedness referred to in paragraph 3 above, the Agency shall apply such fund on the following July 1 to the payment, in whole or in part, of this or similar notes representing the aforementioned aggregate amount of open indebtedness. The Agency shall request tenders from the payee and payees of similar notes of so much of the indebtedness represented thereby and at such prices as the payees shall desire to make. The Agency shall pay such portion of the notes tendered as will operate to its best advantage. In the event that tenders at less than par are not received or if the balance remaining in the sinking fund after acceptance of all tenders less than par shall be $50,000 or more, the balance in the sinking fund shall be applied to the payment of the notes,

without premium, on the basis of the prorata share of each payee in the total amount of such balance of the sinking fund.

6. Agency shall have the right of prepayment of all or any part of the principal amount hereof. Partial prepayment, other than from the sinking fund provided above, may only be made in an aggregate amount of $500,000.00 or more to the holder of this note and all similar notes and only when the Agency is not in default on its obligation and indebtedness referred to in paragraph 3 above. Prepayment on this note shall be made in an amount which bears the same ratio to the unpaid principal amount of this note as the ratio of the aggregate prepayment bears to the total unpaid principal amounts of this and similar notes.

7. In the event that a petition for reorganization under any applicable provision of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Agency, and the obligation of the Agency under this note shall not have been duly assumed by a trustee or trustees appointed in such proceeding or otherwise given the same status as obligations assumed by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever is earlier, or in the event that proceedings for the final dissolution and liquidation of the Agency are commenced, the payee may declare the entire unpaid principal amount hereof, together with the interest thereon then accrued and unpaid, immediately due and payable.

8. Agency hereby agrees that no dividends on its capital stock shall be declared or paid so long as the obligations evidenced hereby shall remain unpaid.

RAILWAY EXPRESS AGENCY, INCORPORATED

By _____

EXHIBIT 7

RAILWAY EXPRESS AGENCY, INCORPORATED
GENERAL BALANCE SHEET AS OF MAY 31, 1959

ASSETS

INVESTMENT:		
Real Property and Equipment	$99 208 310	
Less - Accrued Depreciation	48 139 320	$ 51 068 990
Investments in Affiliated Companies - Stocks		48 500
Other Investments - Bonds		1 035
Total Net Investment		$ 51 118 525
CURRENT ASSETS:		
Cash with Treasurer		22 788 607
Special Deposits		5 056
Loans and Notes Receivable		1 945
Traffic Balances Receivable		447 154
Net Balances Receivable from Agencies		13 136 287
Miscellaneous Accounts Receivable		3 748 178
Material and Supplies		902 142
Interest, Dividends and Rents Receivable		946
Working Fund Advances		1 650
Other Current Assets		1 526 323
Total Current Assets		$ 42 558 298
DEFERRED ASSETS:		
Insurance and Other Reserve Funds		$ 75 426
Other Deferred Assets		15 058
Total Deferred Assets		$ 90 484
UNADJUSTED DEBITS:		
Rents and Insurance Premiums Paid in Advance		$ 169 931
Taxes Paid in Advance		663 392
Other Unadjusted Debits		2 351 604
Total Unadjusted Debits		$ 3 184 927
TOTAL		$ 96 952 234

LIABILITIES

STOCK:	
Capital Common Stock - Issued and Outstanding	$ 99 800
ADVANCES FROM STOCKHOLDERS TO LIQUIDATE BOND ISSUE:	$ 28 591 266
EQUIPMENT OBLIGATIONS:	
Automotive Equipment	$ 9 320 884
Refrigerator Cars	13 932 141
Total Equipment Obligations	$ 23 253 025
CURRENT LIABILITIES:	
Traffic Balances Payable	$ 365 196
Audited Accounts and Wages Unpaid	10 091 415
Miscellaneous Accounts Payable	3 784 134
Matured Interest Unpaid	820 057
Miscellaneous Advances Payable	3 241
Unpaid Money Orders, Checks and Drafts	1 486 121
To Carriers for Hauling Express	14 832 140
Estimated Tax Liability	2 091 710
Unmatured Interest, Dividends and Rents Payable	30 354
Other Current Liabilities	1 462 144
Total Current Liabilities	$ 34 966 552
UNADJUSTED CREDITS:	
Operating and Insurance Reserve	$ 8 789 131
Other Unadjusted Credits	1 247 460
Total Unadjusted Credits	$ 10 036 591
TOTAL	$ 96 952 234

New York, N.Y.

CERTIFIED CORRECT:

R. A. SMITH
Controller

EXHIBIT 8

RAILWAY EXPRESS AGENCY, INCORPORATED

Results of Operations - 12 Months ended May 31, 1959

Revenues and Income	
Charges for Transportation	$381 873 354
Other Revenues and Income	8 668 933
Total Revenues and Income	$390 542 287
Deductions from Revenues and Income	
Operating Expenses	$239 985 989
Express Taxes	17 730 103
Interest on Funded Debt	2 025 660
Other Deductions	137 242
Payments to Rail and Other Carriers for Hauling Express	130 663 293
Total Deductions	$390 542 287

New York, N.Y.

Office of Controller

CERTIFIED CORRECT:

E. A. SAUER
Controller

Exhibit 12

Description of Existing Obligations to be Discharged by the Proposed Noted

The existing obligations which are to be replaced by the proposed issue of promissory notes are loans evidenced only by credit items on the books of the Applicant in favor of the railroads listed in the Application. They constitute open account indebtedness and have never been represented by securities or written obligations of any kind. The loans were created by deductions made from time to time from express privilege payments due to stockholding railroads. Such deductions were for the purpose of meeting the principal amounts due under the terms of the bonds and notes issued by Applicant in accordance with the authority of the Commission given in Securities and Acquisition of Control of Railway Express Agency, Inc., 150 ICC 423 (1929), and Railway Express Agency, Inc. Notes, 230 ICC 478 (1938), respectively. Interest has been paid regularly on the loans, at various rates, but there has been no agreement between Applicant and the railroads on the matter.

28812

INTERSTATE COMMERCE COMMISSION

No. 33140

EXPRESS CONTRACT, 1959

Decided September 21, 1959

Upon application of the Railway Express Agency, Inc., and certain railroads for approval and authorization to pool or divide traffic, service, and earnings in connection with the conduct of the express business, such pooling or division approved and authorized.

R. J. Fletcher, *Paul R. Duke*, *William D. McLean*, *Robert Mitten*, *C. George Niebank, Jr.*, and *Starr Thomas* for applicants.

William J. Augello, Jr., *William C. Ehalt*, and *Charles Donley* for interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS FREAS, WALRATH, AND MCPHERSON

BY DIVISION 3:

Due and timely execution of our functions imperatively and unavoidably requires that the issuance of a proposed report in this proceeding be omitted.

By application filed on July 23, 1959, as supplemented at the hearing on August 18, 1959, certain common-carrier railroads seek our approval and authority under section 5(1) of the Interstate Commerce Act for the continued pooling and division of traffic, service, and earnings incident to the conduct of the railway express business by the Railway Express Agency, Incorporated, hereinafter referred to as the Express Agency, under a new agreement intended to become effective on October 1, 1959, and to continue until December 31, 1973.

There is no opposition to the application. The National Fisheries Institute, Inc., Society of American Florists, and the Producers' Packaging Association, Inc., intervened but offered no evidence. The National Industrial Traffic League, United States Potters Association, J. M. Matthews & Company, and the Chamber of Commerce of Pittsburgh, Pa., informally expressed their support of the application.

We approved and authorized the present pooling arrangement embodied in the present agreement in *Express Contract, 1954*, 291 I.C.C. 11. The operation thereunder was to continue from March 1, 1954, to December 31, 1973, subject to the right of a participating rail carrier to withdraw from the agreement on the first day of any

month after December 31, 1958, if notice of such withdrawal were given not less than 18 months in advance by the first carrier proposing to withdraw and 12 months by others. Some of the smaller rail carriers availed themselves of this right of withdrawal, and one large eastern railroad had served notice of withdrawal at the end of 1959. There were indications that if this intention had been carried out other eastern carriers would have followed its example, foreshadowing a liquidation of the Express Agency.

These withdrawals and threatened withdrawals reflected long-standing dissatisfaction on the part of the railroads with their earnings from express traffic. In 1955 the total out-of-pocket deficit of the railroads from this service was approximately $16 million. In 1956 this figure increased to $24.5 million and in 1958 to $40 million. The estimated deficit for 1959 was originally $38 million but is now $18.5 million as a result of sharp reductions in operating expenses, including discontinuance of advertising, substantial curtailment of the sales force, and material deferment of truck maintenance, deemed advisable in view of the threatened liquidation of the Express Agency.

To avoid that liquidation if at all possible, the new agreement was devised by the directors and other officers of the Express Agency after extensive negotiations. The new "standard express operations agreement" has been formally assented to by all of the express-carrying railroads, except the Chicago and North Western Railway Company.[1] At the hearing on the application, railroad executives representing eastern, southern, and western railroads testified in support of the agreement. It is stated that the agreement is not entirely satisfactory to everyone concerned and has been agreed to reluctantly by some carriers. However, the agreement is generally regarded as the only one which could have received the necessary support, stemming from a unanimous desire to retain railroad control of express transportation.

The broad objective of the agreement is to facilitate contemplated improvements in service and place the express business on a profitable basis. It is expected that these improvements will be made gradually in the period from October 1, 1959, to June 30, 1961. Within that period no participating rail carrier would have the right to withdraw unless the agreement should be amended without its consent. In such event, it could withdraw upon 60 days' notice and other rail carriers could withdraw upon 30 days' notice. A rail carrier could withdraw completely from the agreement on June 30, 1961, on 90 days' notice, and other rail carriers could withdraw on

[1] This carrier will continue to handle express traffic presumably under some individual arrangement.

60 days' notice. After June 30, 1961, a rail carrier would be permitted to withdraw on the first day of any month upon 12 months' notice, and after any such notice is given other rail carriers could withdraw upon 8 months' notice.

Under the new agreement the Express Agency would be able to utilize carriers other than rail lines without the restrictions on such use in the present agreement. The latter permits the Express Agency to "provide any instrumentality other than a railroad train for the transportation of express traffic which otherwise would be transported on trains" of a rail carrier but only with the consent of the rail carrier or carriers parties to the agreement "which might paticipate between the points involved in such transportation if conducted by railroad." The obligation of the Express Agency specified in the new agreement is to conduct the express transportation business efficiently and economically using such routes and modes of transportation as in the judgment of the Express Agency shall be most advantageous in achieving such objective.

Accordingly, the Express Agency "may select any instrumentality for the transportation of express traffic and shall have full freedom of routing of all express traffic, whether by railroad, water carrier, motor carrier airline or otherwise." However, before the Express Agency could divert express traffic from a rail carrier to one of another kind, it would be required to notify the affected rail carrier of its intention to divert in order to permit the filing within 10 days of a protest to the Express Agency's board of directors. A protest would have the effect of suspending the diversion pending a hearing by the board, whose decision would be final upon consideration of the interest of the public, the Express Agency, the protesting rail carrier, and the railroad industry in general. Consistently with this proposal there would be omitted from the new agreement an article in the present agreement requiring the Express Agency to divide competitive traffic among the rail carriers "upon a fair and equitable basis" giving due consideration to "the former distribution of competitive carload traffic and to the elements of service, direct routing, car supply, terminal facilities and overall efficiency."

Of major importance from the standpoint of pooling are the provisions of the new agreement relating to payments to participating rail carriers for the services performed by them. The new agreement, like its predecessors, provides for pooling within four territorial groups, to one of which each participating rail carrier is assigned. In the first contract of 1929, article V thereof[2] set forth the method of determining the share of rail transportation revenue payable to the respective rail carriers, briefly described in

[2] *Railway Exp. Agency, Inc., Securities and Control*, 150 I.C.C. 423, 437 ff.

Railway Exp. Agency, Inc., Pooling Application, 227 I.C.C. 517, 520 as follows:

> Stated generally * * * the earnings from express operations of the Express Agency within each of four specified groups, for each month after accounting for all items of income and deductions therefrom, will be designated "rail transportation revenue" and paid to the carriers within the respective groups that are entitled to receive it, in the proportion that the gross express transportation revenues on other than carload business for the month earned on the line of each such carrier bears to the gross express transportation revenues on other than carload business earned on the lines of all such carriers in the group for that month.

Article V as modified became article 10 of the present agreement, which has been designated article 9 of the new agreement. It is expected to be superseded July 1, 1961, by a new article 10 more fully referred to *infra*. The present basis of payments to rail carriers will therefore continue in effect until that date with two modifications now to be mentioned.

At present revenue from carload shipments, which is treated separately from that on other-than-carload traffic, is divided by giving the Express Agency 10 percent thereof and the individual carload rail carrier 90 percent. Under the proposed agreement, these percentages would be changed to 12.5 and 87.5, respectively, to conform more nearly to relative actual expense involved.

The other modification relates to allocation of Express Agency expenses in connection with other-than-carload shipments moving through three or more regional groups. The present arrangement is substantially a first-class rate prorate, which makes no allowance for lower transportation costs in an intermediate region. The new proposal is that total Express Agency expenses in the future shall be divided 37 percent to the origin group, a total of 26 percent to the intermediate group or groups, and 37 percent to the destination group. Thus each group will share in the Express Agency's costs in the origin and destination regions as a necessary expense for the through movement. This modification is intended to satisfy the objections of rail carriers to a basis which does not take account of regional differences affecting the Express Agency's costs. The modification is in addition to another of the same nature affecting intergroup traffic mentioned in *Express Contract, 1954, supra*, page 12.

Under the new article 10 the present method of determining rail transportation revenue from other-than-carload express shipments would be replaced eventually by a plan for purchasing rail transportation on the basis of a car-foot mile rate related to rail costs. The transition is to be gradual. From July 1, 1961, to December 31, 1962, the Express Agency would pay to the railroads compensation based on a car-foot mile rate for each group to be ascertained by

dividing the total payments to the railroads in the respective groups during selected prior 6-month base periods by the total assigned car-foot miles for the particular group. Under this temporary arrangement there would be a car-foot mile rate for each group, but the ultimate revenue per car-foot mile received by individual railroads in a group would not be uniform. Revenues would be allocated monthly to the groups on the basis of the car-foot miles of the group for the month multiplied by the applicable car-foot mile rate. There would also be a monthly distribution of revenue to individual railroads based on the relation of each railroad's car-foot mile payments in the base period to the total car-foot mile payments for its group.

After January 1, 1963, the Express Agency would pay each group on the basis of a rate per car-foot mile for that group predicated on a group average out-of-pocket rail cost to be computed by application of a formula uniform for all groups. Under this plan, payments for 1963 and succeeding years would be made to the groups on the basis of the car-foot mile rate for each group multiplied by the car-foot miles of the group.

After June 30, 1961, revenue would also be determined under article 9 (the present article 10), and any excess resulting from this alternative application would be divided equally between the Express Agency and the rail carriers.

The use of the new plan described above, however, is contingent upon the repeal of section 557, title 39 of the United States Code, or amendment thereof to make it inapplicable to express companies owned or controlled by rail carriers. Under this section the Commission from time to time is requested to furnish the Postmaster General with information as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter.

The applicants consider the new article 10 to be of outstanding importance for reasons stated by the principal railroad witness as follows:

> This is truly the biggest step which could be taken to create an incentive and to make the Agency independent, in that its personnel will then know what its full transportation obligations are. They will have to operate their company as any other independent business, that is with the necessary efficiency in their operations so that they can pay all their bills—including the cost of line-haul transportation. This change combined with greater freedom given to the Agency in selecting its transportation media * * * should, we sincerely hope, lead to the most efficient and economic operation which it is possible for the Agency to have.

The present contract provides that the Express Agency shall have no net taxable income and directs certain adjustments of its accounts

to this end. The proposed agreement would except from this provision "profit on real property and equipment sold," looking forward to the period after June 30, 1961, when the restriction preventing the earning of net income would be removed if the new article 10 becomes operative. It is the applicants' definite hope that the Express Agency may become a profit-making enterprise in every sense of the word, although the Express Agency's president predicts that the profits "will no doubt be modest at first and will probably all be used for necessary capital expenditures for some time to come." This change in the Express Agency's status is expected to bear fruit in a greater degree of cost consciousness on the part of its officials and employees for reasons explained by one witness in the following statement:

> The present accounting provisions provide the Agency with a blank check to pay its expenses, with the railroads' getting what is left over for line-haul transportation. As a result, we discovered that many people, including some of the Agency's own personnel, looked upon the difference between what the Agency collected from the public and its own costs as something akin to a profit.

The absence of opposition to the application lends weight to such expressions of shipper support as have come to our attention. We believe that the Express Agency occupies a useful place in the transportation of small shipments and that its continuance would be preferable to a substitute organization whose entry into the field might be attended with uncertainty and confusion.

The pooling of service and earnings involved in the proposed plan does not differ essentially from that underlying previous express contracts approved by the Commission. In some respects the proposed agreement removes grounds of criticism directed to previous contracts. The conditions for withdrawal of dissatisfied participants are liberal and reasonable. After June 30, 1961, the periods of notice of withdrawal would be shorter than those in the present agreement. As the agreement could be amended by a vote of rail carriers representing not less than 85 percent of the car-foot miles of all participants, dissident carriers would have less power to prevent modifications than they have under the present agreement, which requires unanimity.

When the present contract was under consideration in 1953, there was criticism of the requirement for the dividing of competitive traffic among the railroads before mentioned. Recognizing the force of this criticism, the Commission, as in an earlier proceeding, considered itself not in a position to deal with the matter at that time, *Express Contract, 1954, supra*, page 14. The new provisions permitting the use of carriers other than railroads appear to be clearly

"in the interest of better service to the public" and "of economy in operation" specified in section 5(1).

Necessarily numerous details of the proposed agreement have not been discussed in this report for the reason that they are not germane to the broad issue of pooling. In prior reports the articles of the contracts dealing with the division of earnings have had principal consideration, but the Commission has deemed it unnecessary to pass upon the specific details thereof. Articles 9 and 10 of the proposed agreement, in our view, satisfy the requirements of section 5(1) that the terms and conditions of the pooling and the consideration as between participating carriers be just and reasonable.

Although we are not primarily concerned with the organic structure of the Express Agency, we believe that the plan to enlarge its managerial responsibility should enable it to perform its functions more efficiently and enhance its usefulness in the transportation field.

We find:

1. That all of the applicants have assented to the pooling or division of traffic, service and earnings involved in the conduct of the express business as proposed in the application;

2. That the proposed pooling will be in the interest of better service to the public and of economy of operation;

3. That the proposed pooling will not unduly restrain competition; and

4. That the consideration for the proposed pooling will be just and reasonable.

An order authorizing and approving the proposed pooling will be entered.

U.S. GOVERNMENT PRINTING OFFICE: 1959

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BEFORE THE

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 20812

Railway Express Agency, Inc., Notes

VERIFIED STATEMENT

OF

L. JOHN EICHNER

On Behalf Of

REA Express, Inc.

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VERIFIED STATEMENT OF L. JOHN EICHNER

My name is L. John Eichner and my business address is 230 Park Avenue, New York, New York. I am a member of the firm of Simat, Helliesen & Eichner, a professional consulting firm which engages in economic and transportation studies for various agencies of the Federal Government, for state and municipal governments and their agencies and for industrial and transportation companies.

STATEMENT OF QUALIFICATIONS

By way of background, I graduated in 1942 from The Johns Hopkins University with a degree in economics. From 1942 through 1945, I was on active duty with the Air Force, and subsequently remained in the Air Force Reserve, with the military occupational specialty of Transportation Officer and the rank of Lt. Colonel, until I entered the retired reserve in 1966.

From 1945 until 1953, I was employed by Capital Airlines in New York and Washington, D.C. and participated in the establishment of one of the first air freight

services in the United States. I was also responsible for the mail and express activities of the company and served as chairman of the industry mail committee during this period, as air postal transportation expert for the U.S. Senate Postal Advisory Council, and on various industry committees. From 1953 until 1961, I was vice president of Texas International Airways, and was responsible for all of the ground activities of this company, including marketing, passenger and cargo services, passenger reservations, scheduling, tariffs and advertising. Throughout this period I represented the local service airline industry as their representative on the Board of Directors of Air Cargo, Inc. in connection with the provision of trucking services for air freight, on the Airlines' Negotiating Committee in connection with the negotiation of the industry contracts for express services, as chairman of the industry's Air Express Committee, and as a member of the Air Traffic conference.

From 1961 until 1966, I was in charge of long range planning for American Airlines. My department, and personnel under my direct supervision, performed complete economic and cost analyses of various passenger services, under varying conditions of carriage, of

various reservations systems, of varying competitive services of all modes. The Equipment Cost Analysis Section was made a part of our Long Range Planning Department for the later years of this period. Various computer reports of costs of providing passenger services by trips and city-pairs were designed and developed by my department.

In 1966 I became a member of the firm of Simat, Helliesen & Eichner, and since then I have participated in or directed major studies of all modes of transportation during the past eight years. Among these studies have been those of the comparative costs of rail and water transportation for domestic and export shipments, of costs of freight forwarder services, of costs of truck pickup and delivery services, of costs of handling passengers for many airlines under many varying conditions, of cost of containerization of small shipments moving by rail and of alternate methods of providing transportation for these shipments, of passenger load factor behavior and the application of load factor standards to passenger rate making, of costs of passenger transportation in the Northeast Corridor, of the effects of density upon costs of trucking and handling of surface and air cargo, of the markets and costs of supplemental airlines for passenger charters, and of rail commutation services and their peaking problems, among others.

Many of our studies have involved statistical costing techniques where it was proper to make use of such techniques and the data permitted their use.

Our firm was retained by the Association of American Railroads to conduct a study for the purpose of determining the nature and amount, if any, of costs incurred by Amtrak in providing, on a space available basis, free transportation to home road pass riders and reduced rate transportation for other eligible personnel.

Because our firm is one of the three firms designated to perform "quick response" studies for the U.S. Department of Transportation in connection with regulatory and study problems relating to all modes of transportation, we were selected several months ago to perform a Rail Branch Line Abandonment Study and, prior to that, a study of Selected Aspects of Rail Carrier Economics. I have spent much of my time during the past four years preparing studies on behalf of the entire airline industry in the first industry-wide investigation of express rates and costs, including the allocation and separation of air and ground (truck, rail & terminal) expenses, and in the preparation of studies for the Metropolitan Transportation Authority of New York State, of which the largest was one of a proposed new rail passenger line.

Through our Canadian affiliate, located in Calgary, Alberta, we have participated in various studies concerning the transportation of cargo and passenger traffic in Canada and the Arctic regions. I have testified, as have my associates, to the results of many of our studies before regulatory bodies and in Federal Courts.

FINANCIAL GAINS TO THE RAILROADS

The purpose of this statement is to summarize the study which was performed under my direction and supervision of the nature, procedures and resulting gains to the railroads from 1929 to 1970 as a result of railroad ownership and manipulation of the Express Company.

A review was made of the operating relationship between REA's predecessor, the American Railway Express Company and the railroads and also practices under the Express Operations Agreements of 1929, 1954 and 1959.

Included is a description of many of the practices the railroads adopted to increase their revenues although they were detrimental to REA. Estimates are made of the net impact upon REA's equity and operating results. Several examples are presented which demonstrate that the railroads' practices were not in accord with directives and understandings of the Commission. As a result both the financial health of REA and the interests of the widespread public users of REA services were penalized.

For a cash outlay of $100,000, the railroads were able to acquire and own REA, during the period 1929-1970, and to benefit tremendously in different and significant ways mostly through accounting changes. From 1929 until the present, actual cash gains were realized by the railroads by changes from the procedures of the various Express Operations Agreements and by unduly taking money out of the express business that should have remained with the express business. In addition, the railroads escaped from substantial liabilities by the formation of REA in 1929 and by the termination of the 1954 Express Agreement in 1959. Finally, the railroads diverted from REA into railroad assets, in the form of "advances" and interest thereon, large sums of money, that should not have been so reported. These actions against REA and the resulting dollar impacts are discussed below.

Misrepresentation of Express Income Earned by the Railroads in Rate Cases

1. Under the operations agreement approved by the ICC on February 11, 1929 (150 ICC 423), the items enumerated by Article V as properly deductible before determining railroad transportation revenues included

all operating expenses of REA, interest, and also Accts. 328 "Income applied to sinking fund and other reserve funds" and 409 "Surplus applied to sinking and other reserve funds."[1/] The railroads did not permit REA to use Accts. 328 and 409 as a deductible item in determining railroad transportation revenues, as contemplated by the agreement presented to the Commission for approval and approved by the Commission. Instead, the railroads provided for the payment of the sinking fund requirements in respect of the $32 million in serial gold bonds placed with J.P. Morgan & Co. and Kuhn, Loeb & Co. by means of ficticious "advances" from the railroads to REA which were treated on the books of REA and the railroads as loans bearing interest at rates generally in excess of the 5% coupon rate of the serial gold bonds. Interest on the so-called "advances" was charged to Acct. 323 -- Interest on funded debt -- and the amounts so charged were deducted in deriving the amounts payable to the railroads for transportation services.

1/ The Uniform System of Accounts for Express Companies, issued on July 1, 1914, states that Acct. 409: "...shall include amounts definitely appropriated from surplus and applied to sinking and other reserve funds; and allotments or payments of definite amounts from surplus into sinking and other reserve funds under the terms of mortgages, deeds of trust, or other contracts that provide for such allotments or payments."

Mr. Mahaffie, Director of Finance of the Commission, carefully questioned two of the railroad lawyers discussing proposals for paying off the bonds at a meeting on January 11, 1929, to assure himself that nothing of what was being proposed would be injurious to the public interest. "He said he was not a rate man, but did not wish to have anything in this proceeding that would afford a claim that it should have been looked at from a rate standpoint." They assured him that it would have no rate effect whatever. (Memorandum of Conference with Mr. Mahaffie, Director of Finance, January 11, 1929. Attachment 15)

In view of the changes which the railroad directors made in what the Commission approved, however, the effect was to constitute a serious burden on REA as well as on the shipping public. In effect, the over-statement of the amounts credited to rail transportation expense was a form of price fixing. This was accomplished by increasing the amounts payable by REA to the railroads for their transportation services by $1.6 million per year, which increased the liability of REA to the railroads. In effect, by not deducting the sinking fund payment before computing rail revenues, the railroad directors increased the price charged by the railroads by $1.6 million over that authorized by the Commission. This increase then became a liability of REA when it

was "advanced" to REA (bearing an above-the-market interest rate) which thus compounded the effect of the change.

The method of repayment adopted by the railroads, in contravention of the terms of the operations agreement approved by the ICC, in fact, resulted in an increase in the total costs of express services recoverable through the rates chargeable to users of the services. If the $32 million in gold serial notes had been retired in 20 years by semiannual payments of $800,000, as was contemplated by the agreement, REA would have been subject to charges of $48.72 million over the life of the notes, consisting of $32 million in sinking funds charged to REA Acct. 328 or 409, $16 million charged to Acct. 323--interest on funded debt, and $0.72 million charged to REA Acct. 325--amortization of discount on funded debt. The method of repayment that was actually employed, by direction of the railroad-controlled Board of REA, resulted in substantially greater total costs in respect of the original loan of $32 million. While no provision was made for charges of $32 million to REA Acct. 409 to meet the sinking fund payments, interest charges to REA Acct. 323 were increased to include interest on the amounts "advanced" to retire funded debt as well as the interest on the funded debt. Since 1929, interest payments directly traceable to the original gold serial bonds,

together with interest on notes and "advances" which replaced the original bonds, have totaled $57.1 million. This amount is made up as follows:

Interest Payments (Millions)	Security
$12.2	5% Gold Serial Bonds (1929)
1.6	Series A Serial Notes (1938)
43.3	"Advances"
$57.1	Total

Interest costs of REA were and are properly includable charges in the determination of rates to the public for the handling and transportation of express traffic. Consequently, interest expenses for rate-making purposes were increased by the substitution of a system of advances for the sinking fund provisions contained in the original operations agreement presented to the ICC for approval in the amount of $43.3 million--the difference between interest payments on the initial $32 million debt of REA and actual REA interest payments recoverable from the public through express rates.

Thus, Commissioner Mahaffie properly exhibited concern about the impact upon rates as a result of the acquisitions of the Express business by the railroads. The Commission's approval of the control of REA by the railroads undoubtedly was premised upon the representation that the plan as presented would have no rate effect whatever. However, the Commission was not told about the much different plan under consideration which was implemented by the railroads as soon as their control of REA was a fact. The revised method, with its increasing instead of decreasing interest payments, put a continuing upward pressure on rates charged to the public.

Further, it is obvious that, should REA now be required to pay the 1959 Notes and accrued interest thereon, the upward pressure on rates paid by the shipping public, should REA survive the ordeal, would be even more dramatic, amounting to a total of over $124 million paid from Express revenues since 1929 for the purpose of acquiring a property with a valuation of only slightly over $30 million.

The total is made up of the following elements:

Amount (Million)	Basis
$ 12.2	Interest 5% Gold Serial Bonds (1929)
1.6	Interest on Series A Serial Notes (1938)
43.3	Interest on "advances" paid through 1970
4.4	Accrued interest on 1959 Notes if payments were continued to June 30, 1974
32.0	Principal repaid on initial loan
4.0	Principal repaid on "advances"
27.0	Unpaid principal on "advances" (1959 Notes)
$124.5	Total

Included in this amount is interest on the original gold serial bonds, interest on notes and "advances" that replaced the original bonds and principal repayments on the "advances" which have totaled $61.1 million, since 1929. This $61.1 million plus the $32.0 million repayment of the initial gold bonds of 1929 makes total payments of $93.1 in principal and interest exclusive of the $31.4 million accrued interest and unpaid principal on the "advances".

2. The effect on rates of improper and economically unwarranted addition of interest costs on "advances" was intensified over the years because the railroads did not acknowledge that the interest payments received from REA were part of express income offsetting operating and capital costs incurred in providing

express services. Instead, it was consistently represented to the Commission in express rate case proceedings during the years 1929 to 1959 in which the railroads sought increased revenues that rail transportation revenue ("express privileges") constituted "...the only compensation the railroads receive for transporting express traffic."[1/] In fact, the stockholding railroads received also the payment of "interest" on the fictitious "advances" (which interest was at rates in excess of what would have been charged by independent lenders).

This served to shift REA cash payments from the "Express Privileges - Dr." account, for amounts paid to the railroads for their express services and thereby created much of the deficit below fully allocated costs which the railroads experienced after 1940.

For example, Attachment 1, page 3, shows that the interest rate on the original gold bonds, and the notes which were substituted in 1938 for the bonds, declined from the full 1929 level of $1,600,000 per year to less

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1/ Ex Parte No. 163, Increased Express Rates and Charges, 1946, Testimony of L.O Head, July 29, 1946, page 8. See also: Ex Parte No. 169, Increased Express Rates Charges, 1949, Testimony of A.L. Hammell, September 7, 1949, page 8; Ex Parte No. 185, Increased Rates and Charges, 1953. Testimony of Fred Carpi on Cross Examination, May 4, 1953, pp. 223-4 and Docket No. 32035, Increased Express Charges Within Eastern Territory (1957), Testimony of C.J. Jump, page 11 and Brief of REA, page 4.

than a quarter million dollars per year subsequent to 1940.

Yet, as is shown in both Attachments 1 and 2, the interest payments by REA never dropped below a million dollars. For example, in 1945 the interest on the notes was only $133,200. If the original plan outlined to the ICC in 1929 for the sinking fund had been followed (assuming as prudent businessman, REA using the 1938 refinancing would take advantage of the drop in interest rates that had taken place) the total interest of REA on its funded debt would have been only $133,200 in 1945.

In actual fact, 1945's interest payments consisted not only of the $133,200 to the outside note holders but also $1,130,429 to the railroads credited with the "advances". (Attachment 1, p.1) Together, they came to $1,263,629. (Attachment 1, p.6) The $1,130,429 was not reflected as payments to the railroads for their transportation services which it would have been if the plan approved by the Commission had been carried out. This payment of interest on the "advances" grew in size until, in 1950, it reached $1,430,428 per year.

Because the money went to the railroads as interest on the "advances", it was not reflected in statements to the Commission as payment for the railroads' express services. It thus served to increase the size of the express deficit of which the railroads complained in the 1950's. Yet this increase in the so-called deficit really was overstated because the railroads received the $1,430,428 in another form of payment from REA which otherwise would have shown up in rail transportation revenues.

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3. In all general express rate case proceedings during the years 1929 to 1959, the interest on the so-called "advances" was improperly included in the deduction from REA's gross receipts temed "Interest and Discount on Funded Debt,"[1/] and continued to be so deducted even after REA's true "funded debt", evidenced by the 1929 bonds and the 1938 notes approved by the Commission, had been retired in 1946.[2/] (Attachment 1 and Attachment 2)

The 1929 standard express operations agreement was further altered by the railroads, without advising or obtaining the necessary approval of the Commission, to breach the provision made in the agreement for the inclusion of charges to Acct. 411--Surplus set aside for investment in physical property--among the charges

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1/ Ex Parte No. 126, Express Rates, 1938-1939, Testimony of Charles A. Lutz, July 6, 1939, page 17 and Lutz, Exhibit 1, sheets 1 and 9 and Ex Parte No. 163, Increased Express Rates and Charges, 1946. Petition of REA, June 20, 1946, Exhibits A and D, and Testimony of W.A. Benson, page 98 and Benson, Exhibit 30, sheets 3 and 4.

2/ Ex Parte No. 169, Increased Express Rates and Charges, 1949, Benson, Exhibit 1, sheets 3 and 4; Ex Parte No. 177, Increased Express Rates and Charges, 1951, Benson, Exhibit 67; Ex Parte No. 186, Increased Rates and Charges, 1953, Exhibit 3, Sheet 3 and Testimony of K.N. Merritt, Exhibit 12-B; Docket No. 32035, Increased Express Charges Within Eastern Territory (1957), Testimony of C.J. Jump, Exhibit 1, sheet 1 and Ex Parte No. 210, Increased Express Rates and Charges, 1957, C.J. Jump, Exhibit 5, page 1.

properly deductible by REA in determining rail transportation revenues ("express privileges"). Acct. 411 is described in the Uniform System of Accounts for Express Companies, as follows:

> This account shall include amounts definitely appropriated from surplus to be applied for the acquisition of real property and equipment, for additions to or betterments of property carried in the real property and equipment accounts, or for the acquisition of property the cost of which is includible in account No. 503, "Miscellaneous physical property."
>
> Records of the accounting carrier shall be so kept that the appropriations charged to this account for any fiscal period may be distinguished as relating to real property or equipment used in operation, or to property shown in account No. 503, "Miscellaneous physical property," and as relating to (a) amounts expended during preceding fiscal periods, (b) amounts expended during the current fiscal period, and (c) amounts held in reserve.
>
> Note A.--Similar appropriations made from income shall be charged to income account No. 330, "Income appropriations for investment in physical property."
>
> Note B.--The amounts charged to this account shall be concurrently credited to balance sheet account No. 552, "Additions to property through income and surplus," or to account No. 553, "Reserves from income and surplus."

In providing for the deduction of Acct. 411,

in the computation of rail transportation revenues, the clear and proper intent was to make allowance in the revenues of REA for earnings necessary to meet the needs of REA, as a going concern and the nation's prime supplier of small package transportation, for the modernization and growth of its physical plant. The railroads effectively set aside this provision of the 1929 operations agreement by excluding any and all charges to Acct. 411 and prevented REA from utilizing that account, for funds to modernize and augment its plant. The effect, over time, was to cause the capital equipment and facilities of REA to become obsolescent which impaired the ability of REA to serve the shipping public.

Thus, REA was placed in the position where funds for equipment replacement and for new physical stocks were available, as a practical matter, only from the cash throw-off from depreciation. Since depreciation accruals, in a period of general price inflation, are based on the lower costs of property purchased in earlier years, funds from depreciation were insufficient to replace wornout equipment, even without adding to plant capacity. For instance, the projections of REA in 1948 (See L.O. Head letter to C.W. Charske, dated May 17, 1948, **Attachment 14**) estimated that cash throw-offs from depreciation in the period from 1949 to 1953 would be

insufficient to provide the funds necessary to replace equipment needed for a projected increase in express traffic. It was noted, in connection with the projections of cash requirements for equipment replacement, that the average cost of automobiles purchased in 1947 was $2,200 per unit as compared with an average cost of $1,267 per unit of automobiles retired during the year. The inadequacy of funds from depreciation to meet not only on-going equipment replacement but also needs to purchase new equipment for REA was restated in an August 15, 1961 letter of Mr. William B. Johnson, President of REA to Mr. Jervis Langdon, Jr., then President of the Baltimore & Ohio Railroad, (Exhibit REA-78):

> "Because of the greatly increased unit cost of equipment and facilities and the fact that the Express Company has had to purchase 1,500 refrigerator cars (500 in 1947, 500 in 1955 and 500 in 1957) and through the years has spent a great deal of money for new and improved equipment including materials handling equipment, our accruals for depreciation have fallen far short of the amounts needed for capital expenditures." (Emphasis added.)

The force and effect of the policies pursued by the railroads with respect to the unauthorized and unannounced exclusion of Acct. 411 as a deductible charge in arriving at rail transportation revenues or revenue excess to share under the 1929 SEOA and with respect to the requirement imposed by the interlocked

REA Board at its meeting of September 30, 1930, that "expenditures for property in excess of amount realized from depreciation and retirement charges be financed by borrowing from the stockholding railroad companies," was to effectively eliminate REA's ability to expand its physical plant to the developing needs of the marketplace and to the opportunities for cost economies and service improvements afforded by new technology.

The nature of the so-called "advances" would be apparent to everyone if the railroads had set them up in one fell swoop at the time they paid $100,000 for REA in cash. If, instead of gradually taking the capital of the company over the years, and transferring it to the account entitled "Non-negotiable promissory notes", the railroads in 1929 had placed $27,637,054 in such an account and then started to pay interest on it to themselves, everyone would recognize it for what it was. It would have been apparent that the railroads, as owners, were slicing a melon, and paying themselves dividends from non-existent profits. The capital which was the source of these dividends was not contributed by the railroads and should have been devoted to the express business.

The railroad owners of REA did not do it

that obviously. Instead they did it semi-annually, year-by-year. Over a period of time, the accumulation and effect were the same. At the end the result was a "pseudo debt" on the books that was treated as debt when it came to paying interest to the railroads, but was treated as capital, or net worth, when convenient. (See Attachment 3).

It was not true debt, however, as far as the top ranking officials of REA were concerned as evidenced by the many letters, memoranda and reviews of the subject over the years. It was almost all of the capital account of REA. (Attachment 3)

In normal practice, with normal double entry bookkeeping, as cash is paid out in a sinking fund payment of long-term debt, the cash "credit" or decrease on the asset side of the balance sheet is equalled by a long-term debt "debit" or reduction on the liability or right hand side of the balance sheet.

In this case, the ingenuity is shown by the fact that while cash on the asset side was reduced, REA had no corresponding reduction on the liability/equity side. Instead the reduction of one form of debt - whether gold bonds before 1938 or notes thereafter - was equalled by an increase of another form of debt - the fictitious "advances".

The balance sheet was kept in balance by the simple device of first inflating the amounts due to the railroads for their transportation services by an amount equal to the sinking fund payments. These overstatements of amounts due to the railroads created an overstated short-term liability of REA to the railroads.

Then, in effect, the balance on the right hand side of the statement was achieved in three steps (instead of the usual single step mentioned earlier for debt reduction) as follows: First, the inflated short term accounts payable due to the railroads were reduced by an amount equal to the sinking fund payments; second, long-term "non-negotiable debt to affiliated companies - advances" increased by an amount equal to the sinking fund payments; and, finally, the third step was the reduction of the long-term outside debt account itself by an amount equal to the "advances".

In Section I below, the actual cash gains realized by the railroads, at REA's expense, from conversion of the 1929, 1954 and 1959 Standard Express Operations Agreements to these procedures are summarized with a description of the railroads' action which resulted in the dollar damage. Actual cash drained was $150 million.

Following that listing, Section II contains a description, with estimates of the dollar impact, of the liabilities the railroads would have incurred if they were required to start the express business on their own in 1929 as well as the responsibilities they would have had in the event REA was terminated in 1959. In addition, Section II contains a discussion of the incorrect accounting practices followed with respect to the funds used to reduce $32,000,000 series A bonds issued to start the Express Agency in 1929. Railroad liabilities saved and assets excessively claimed by the railroads are estimated at between $81 million and $105 million.

By means of a cash investment of only $100,000 the railroads gained control of the express business grossing about $300 million annually. After doing so, the railroad owners then proceeded to pay themselves $150 million by various procedures summarized below. Simultaneously, the railroads relieved themselves of $54.3 to $78.3 million in liabilities, while increasing their own recorded assets to a total of over $27 million, that represented monies which were rightfully belonging to REA, and which should never have appeared in the railroads' accounts. These sums amount in total to $243 million, plus or minus $12 million.

I. Actual Cash Inflow Realized By The Railroads As A Result Of Conversion And Misapplication Of The Standard Express Operations Agreements (SEOA) Of 1929, 1954 and 1959

A. The following financial gains were made by the railroads as a result of changes that removed REA from the profit-sharing position its predecessor American Railway Express Company had enjoyed, by unreasonably appropriating REA's profit from the Air Express business and by misapplying the terms of the various Express Operations Agreements:

Summary
(Millions)

1. Prior to the institution of its suit, REA's interest and principal payments on the so-called "advances" from the railroads totaled $47.3 million. The advances were created in a manner inconsistent with the ICC's intent that certain debit and credit items should be deducted when arriving at revenue due the railroads including surplus applied to sinking funds or set aside for investment in physical assets, and deducted as an expense from REA's gross receipts, thereby reducing revenues received by the railroad from express business. The rates paid by the shippers of express were premised on the assumption that they included an element to reflect REA's cost of capital, yet the proceeds were credited to the railroads which had contributed nothing to the capital of the express business, their so-called "advances" actually having been overstatements of express revenues. As the advances were monies belonging to REA, they should not have borne interest to the railroads.

   a. Of the $43.3 million total paid in interest, $30.3 million was interest on the "advances" and on the notes paid by REA to the railroads between 1929 and July 1961, when REA was placed on a 50-50 revenue excess sharing relationship with the carriers. (The remainder of this interst, $13.0 million is included in I.B.1 below.) (Attachment 1) $ 30.3

   b. In addition $4.0 million is composed of $3.6 million alleged debt repaid the railroads through 1959 which reduced REA's cash balance available for investment and working capital purposes and $0.4 million paid from REA profits from 1964-1966 to redeem notes as a result of the terms of the 1959 SEOA. 4.0

2. REA was forced to pay federal income tax because of the disallowance of reductions for depreciation for the years 1937 to 1948. Although REA was supposed to deduct taxes as an expense from its gross receipts in determining payments due the railroads it was forced to pay approximately $2.6 million owed in taxes which was taken from its depreciation reserve rather than included as an expense. 2.6

Summary
(Millions)

3. Prior to 1929, according to the Uniform Express Contract (UEC) in existence between the railroads and REA's predecessor, the American Railway Express Company, gross revenues (less 85% of carload revenues and operating expenses and certain other deductions) were designated as Income for Division. From this, 2-1/2% went to American Railway Express (ARE) and 97-1/2% to the carriers. If this 2-1/2% exceeded 6% of the average capital employed in the express business, the excess between 6% and 8% was split 50-50 between ARE and the carriers. If the 2-1/2% ARE retention exceeded 8% of the capital invested, a further division of 75% to the carriers and 25% to ARE was made on that excess. 1/ (Both the 2-1/2% and the 97-1/2% were part of the rates paid by the public and remained unchanged after 1929.) If this formula had been applied subsequent to 1929, with REA receiving the 2-1/2% in place of ARE, REA would have retained $43,012,500 through 1954, and an additional $15,933,500 through June of 1961 when REA was put on a revenue excess sharing basis. This change, resulting from the different terms of the 1929 SEOA compared to the earlier UEC, represents a windfall to the railroads of $58,946,000 or about $1,900,000 annually between 1929 and 1961. (Attachment 4) $58.9

1/ Commissioner Eastman noted in 69 ICC 316, that "So favorable did the (1920) contract prove that in the second year of its operation the Express company made a voluntary additional payment of $1,700,000 to the railroads in order that its profits might not substantially exceed 8 percent" and that a change had been made to avoid such large profits. Under the 1929 agreement, all of the profits previously built into the rate base for American Railway Express, flowed through to the railroads, less the sinking funds deductions which should have been made to retire the debt (but which the railroad directors did not permit REA to take).

	Summary (Millions)
4. The profit earned by REA from the Air Express business between 1929 and 1959 was included in REA's gross receipts, and was paid over to the railroads as part of their "express privilege" payments. If REA had been operated as a viable independent business, such profits would have been retained by REA to be reinvested in the development of the Air Express business; instead, they were paid to the railroads as compensation for the services rendered by them in transporting express traffic, even though the railroads took no part in performing air transportation services connected with Air Express. The $9.6 million of Air Express profits received by the railroads between 1951 and 1959 were monies to which they were not reasonably entitled (Attachment 5)	$ 9.6
5. Total financial drain from the Express business by the railroads between 1929 and July 1, 1961.	$105.4

B. Subsequent to July 1,1961 REA was permitted to accumulate retained earnings from profitable operations. The railroads, in addition to receiving payments for line haul service based on fixed rates, received 50% of any excess of revenue over expenses, including the basic line haul computations.

The railroads received the following financial gains from unilateral changes which were made in the terms of the Express Operations Agreement. (The actual abuses and out-of-pocket losses are first presented, followed by the net impact on REA, after the 50% split, during the period July 1, 1961 to December 31, 1968.):

Summary
(Millions)

1. Of the $43.3 million interest paid on the so-called "advances", $13.0 million was paid after July 1,1961. $13.0

2. A 2.5 percent return on investment,not specified in the 1959 SEOA, was appropriated by the railroads by adding this percentage to the out-of-the-pocket line haul expense base used to determine revenue excess above expenses. This amounted to $17.5 million between 1963 and 1968 and represents windfall revenue to the railroads, not envisioned in the 1959 SEOA. (Attachment 6) 17.5

3. When determining out-of-pocket costs chargeable to REA according to the 1959 agreement, "...average express out-of-pocket costs of the rail companies..." were to be used. Railroad expenses for commuter operations are not part of express costs. Only one railroad removed these costs when determining the out-of-pocket basis; the others did not and alleged that they were not able to remove these expenses. Based upon the minutes of the Express Accounting Committee subcommittee meeting on February 3, 1967, "...exclusion of commuter expenses would reduce the Eastern group out-of-pocket expenses, rents and taxes for handling LCL express in 1962 by 9%...". If this 9% were removed from the line haul cost basis for the Eastern roads between 1963 and 1968, REA would have saved $13.8 million. This amount

Summary
(Millions)

which the railroads should not have charged, is a conservative estimate because no estimate or removal of commuter related expenses for the Mountain, Southern and Western (except for one railroad) roads has been made.1/ (Attachment 7) $ 13.8

4. Article 10, Section 3 of the 1959 Express Agreement specified that a formula relating actual out-of-pocket cost to fully allocated cost to the railroads of handling Express was to be developed by the Express Accounting Committee. Although no attempt was made to acquire an independent outside estimate of the relationship described above, the railroads decided that the out-of-pocket costs were 74% of the fully allocated costs. REA objected strenously to this figure, having determined that the ratio should be 70%. The additional revenue

1/ For the one railroad comparing total operating expenses, rents and taxes, in regular and suburban passenger services, the expense per car mile in suburban service was 80% to 100% greater than those for regular service.

	Summary (Millions)
	$
realized by the railroads between 1963 and 1968 (after removal of the 2-1/2% ROI element in B2 above), by using a 74% ratio between out-of-pocket and fully allocated cost came from an inflated line haul cost basis, which resulted in excess costs to REA of $19.6 million. (Attachment 8)	19.6
5. The railroads included freight cars used on REA's behalf at more expensive passenger car rates in determining the out-of-pocket cost basis. It was estimated by the Express Accounting Subcommittee (described in B3 above), that the car-foot-mile rate on the Eastern roads would be reduced by 2.4% if freight cars were billed at freight car rates. Again, not making any claim for the Southern, Western and Mountain roads, this 2.4% over-charge by the Eastern group between 1963 and 1968 resulted in $3.7 million more in out-of-pocket payments to the railroads than they actually expended on REA's behalf. (Attachment 9)	3.7
6. The railroads included in the car-foot-mile rates used to determine line haul out-of-pocket costs, a cost for personal injury to railroad employees. This $3.6 million expense from 1963 to 1968 is not related to the Express business and should not have been included in the cost study basis. (Attachment 10)	3.6

	Summary (Millions)
7. In accord with amendments to the 1959 SEOA, payments for loss and damage, personal injury and property damage claims resulting from occurrences prior to July 1,1961 were made by REA and deducted from "express privilege" payments to carriers until the termination of such payments at the end of 1968. Subsequently, REA billed the carriers for such payments and the non-reimbursed total is approximately $500,000. (Attachment 11)	$ 0.5
8. The gross dollar amount of excess costs paid by REA after July 1, 1961, itemized above, totals $71.7 million. These items would have reduced REA's expenses and because of the 50-50 division of REA's revenue excess above expense if such an excess occurred, the railroads' share of the additional amounts available for distribution between July 1, 1961 and December 31, 1968 amounts to $26.9 million, which must be removed from the total excess costs paid, in determining the net amount due REA. (Attachment 12)	(26.9)
9. Net "out-of-pocket" losses suffered by REA between 1961 and 1968.	$ 44.8
C. Total "express privilege" payments realized, expenses avoided or other undue enrichment received by the railroads between 1929 and 1968. 1/	$150.2

1/ This figure does not include REA's pension liability estimated in December 1958, by Alexander and Alexander, Consulting Actuaries, to be $26.4 million, in respect of all service to REA, on the assumption that REA would be an on-going business.

Summary
(Millions)

II. Railroad Relief From Potential Liabilities and Inflation of Railroad Assets

In addition, the railroads were relieved of potential liabilities and showed increased asset accounts as a result of the following non-cash effects of the 1929 and 1959 agreements:

A. The express business was purchased in 1929 to relieve the railroads from a liability under Article XX of the Uniform Express Contract in a range of $54.3 million to more than $78.3 million. This liability arose from obligations to acquire Express Company property employed in the Express business of each railroad which amounted to $30.3 million, the price agreed upon by the railroads and REA, plus the start-up costs that would have been incurred if each railroad were required to establish its own new express business to meet the public need. The start-up costs at 1928 Express privilege and operating levels amounted to $24 million for 30 days, hence allowing a 30 to 60 day start-up period during which receipts would be substantially less than cash outflow, the estimated liability prior to acquisition (of which the railroads were relieved by the 1929 agreement) is between $54.3 and $78.3 million. These estimates do not include maximum liability for land acquisition, as an agreed figure was used. If individual parcels were used, the value may have been higher, in the context of a going business. $54.3 - $78.3

B.	The remaining "notes" of $27 million classified as "advances" to REA on the asset side of the railroads balance sheet is an inaccurate portrayal as a railroad asset. The sinking fund payments should have been recorded as an REA expense on REA's income statement, thereby reducing line haul payments to railroads. Thus the "advances" should never have shown up on the railroads' balance sheets. Consequently, the asset and equity accounts of the participating railroads were overstated in aggregate by $27 million.	$27.0
C.	Total liabilities relieved or assets overstated by the railroads 1/.	$81.3 - $105.3

The impact of the unilateral changes made by the railroads, and listed in Sections I and II above, in both the 1929 and 1959 Express Operations Agreements, continues to the present time. The depletion of capital resources due to the substitution of "advances" for the sinking fund described in the 1929 application resulted in the inadequate and obsolescent plant which REA has today. The added deductions from adding a 2.5% return on investment to the railroad expenses, the added deductions from including a share of commuter operation costs into the express costs, the use of passenger car rates when freight cars were actually used and other items enumerated in Section B above,

1/ This figure does not include potential liabilities of the railroads if REA were terminated in 1959, based upon the SEOA's of 1929 and 1954. These liabilities were estimated by Booz, Allen and Hamilton, at the time of the 1959 agreement, to be in the range of $700 to $800 million.

which was contrary to the 1959 SEOA, all depleted the assets and lessened the ability of REA to modernize its plant and equipment.

Even the 1959 SEOA itself was not permitted to run its course to 1973. Scheduled to run until December, 1973, it was terminated prematurely in December, 1968, so that the out-of-pocket cost provision of the SEOA was quietly abolished.[1/] The impact of that change, not itemized above, was to increase the "express privileges" paid by REA to the railroads by approximately 34% above the amounts provided in the 1959 SEOA. Such a change would make historic costs of operation of little use as a guide to future operating expense when non-railroad owners of REA finally took over the operation in 1969 because they guaranteed a jump in rail payments for equivalent services, whether passenger car or piggy back.

1/ Exhibit REA-86

Summary and Conclusions

In summary, as a result of a cash investment of only $100,000, the railroads were enhanced financially from 1929 to 1970 by conversion from the Uniform Express Contract to the Express Operations Agreement in the following ways:

Actual cash inflow or outflow saved	$150.2
Liabilities saved and assets shown	81.3 - 105.3
Total benefit to the railroads	$231.5 - $255.5

REA, as an entity, suffered damages over and above the amounts enumerated because the interlocked directors (Attachment 13) and excessive amounts paid to the railroads over the period 1929-1968, made it impossible for the management of REA to conduct, properly, its business and to invest capital in the necessary facilities and equipment to maintain its service quality and its market share.

VERIFICATION

COUNTY OF NEW YORK)
) ss.
STATE OF NEW YORK)

L. John Eichner, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

L. John Eichner

Subscribed and sworn to
before me this 3rd day
of October 1974.

Geraldine M. French
Notary Public

GERALDINE M. FRENCH
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Certificate filed in New York County
Commission Expires March 30, 197[illegible]

My commission expires _____, 19__.

REA EXPRESS
INTEREST ON NON-NEGOTIABLE DEBT
TO AFFILIATED COMPANIES-ADVANCES

Year	Interest Paid in Year	Accrued Per Books	Accrued Prime Rate
1929	$ -	$ 14,000	$ 16,000
1930	66,000	104,000	104,000
1931	168,000	200,000	167,000
1932	264,000	296,000	198,000
1933	360,000	391,800	261,000
1934	455,906	487,900	122,000
1935	551,622	576,100	144,000
1936	540,191	523,000	131,000
1937	573,177	604,300	152,000
1938	666,416	691,500	173,000
1939	832,461	652,100	239,000
1940	730,429	737,100	222,000
1941	810,429	817,100	246,000
1942	890,429	897,100	269,000
1943	970,429	977,100	293,000
1944	1,050,429	1,057,100	318,000
1945	1,130,429	1,137,100	342,000
1946	1,210,428	1,217,100	366,000
1947	1,290,429	1,297,100	397,000
1948	1,370,428	1,377,100	516,000
1949	1,430,428	1,430,400	572,000
1950	1,430,428	1,430,400	592,000
1951	1,430,428	1,430,400	729,000
1952	1,430,428	1,430,400	858,000
1953	1,430,428	1,430,400	906,000
1954	1,430,428	1,430,400	873,000
1955	1,286,944	1,263,000	902,000
1956	1,143,651	1,143,700	1,080,000
1957	1,143,651	1,143,700	1,203,000
1958	1,143,651	1,143,700	1,095,000
1959	953,042	1,203,200	1,268,000
1960	1,381,853	1,381,900	1,332,000
1961(6 Months)	690,926	690,900	622,000
Subtotal (1929 to 6/30/61)	$30,257,918	$30,607,100	$16,708,000

REA EXPRESS
INTEREST ON NON-NEGOTIABLE DEBT
TO AFFILIATED COMPANIES-ADVANCES

Year	Interest Paid in Year	Accrued	
		Per Books	Prime Rate
1961(From 7/1/61)	$ 690,927	$ 690,900	$ 622,000
1962	1,381,853	1,381,900	1,244,000
1963	1,381,853	1,381,900	1,244,000
1964	1,381,853	1,381,900	1,244,000
1965	1,377,230	1,377,200	1,251,000
1966	1,368,705	1,368,700	1,536,000
1967	1,363,680	1,362,600	1,536,000
1968	1,360,319	1,360,300	1,708,000
1969	1,360,319	1,360,300	2,152,000
1970	1,360,319	1,360,300	2,150,000
Subtotal (After 7/1/61)	$13,027,058	$13,026,000	$14,687,000
Total	$43,284,976	$43,633,100	$31,395,000

Source: Annual Reports of REA to the I.C.C.
Company Records.

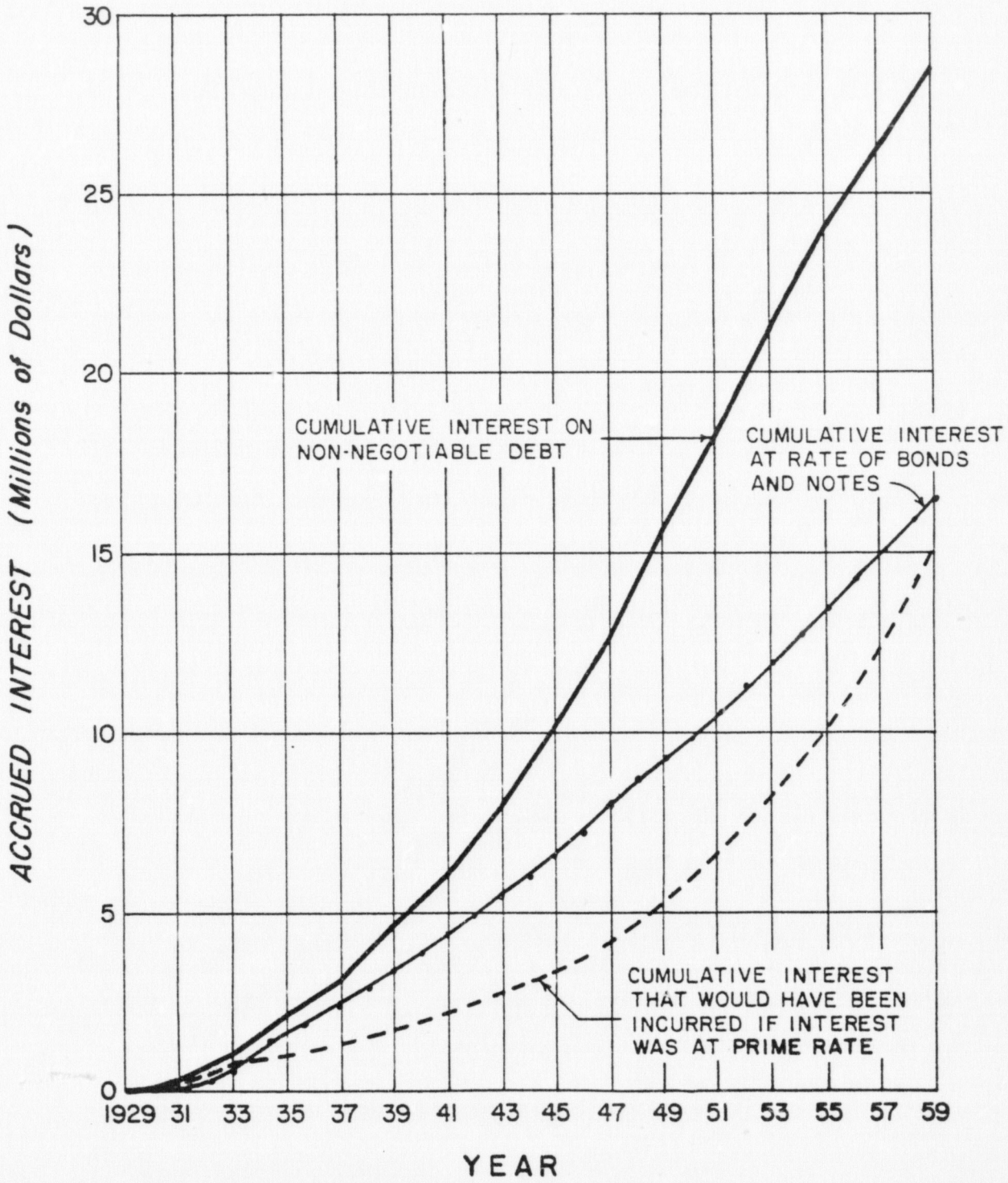
REA EXPRESS
INTEREST EXPENSE ACCRUED ON BONDS AND
NOTES AND NON-NEGOTIABLE DEBT
AT THE RATES USED ON THE BONDS AND NOTES

Year	Accrued Interest Expense		
	Bonds and Notes	Non-Negotiable Debt	Total
1929 (10 Months)	$ 1,320,000	$ 13,300	$ 1,333,300
1930	1,513,300	86,700	1,600,000
1931	1,433,300	166,700	1,600,000
1932	1,353,400	246,600	1,600,000
1933	1,273.300	326,700	1,600,000
1934	1,193,300	406,700	1,600,000
1935	1,113,400	480,100	1,593,500
1936	1,033,300	425,300	1,458,600
1937	953,300	503,600	1,456,900
1938	1,015,600	408,100	1,423,700
1939	264,900	450,300	715,200
1940	254,200	464,300	718,500
1941	237,900	480,600	718,500
1942	217,600	500,900	718,500
1943	193,200	525,300	718,500
1944	164,900	553,600	718,500
1945	133,200	585,300	718,500
1946	93,200	506,400	599,600
1947		648,600	648,600
1948		715,200	715,200
1949		715,200	715,200
1950		715,200	715,200
1951		715,200	715,200
1952		715,200	715,200
1953		715,200	715,200
1954		715,200	715,200
1955		714,900	714,900
1956		714,800	714,800
1957		714,800	714,800
1958		714,800	714,800
1959 (9 Months)		536,100	536,100
Total	$13,761,300	$16,180,900	$29,942,200

Source: Company Records

REA EXPRESS

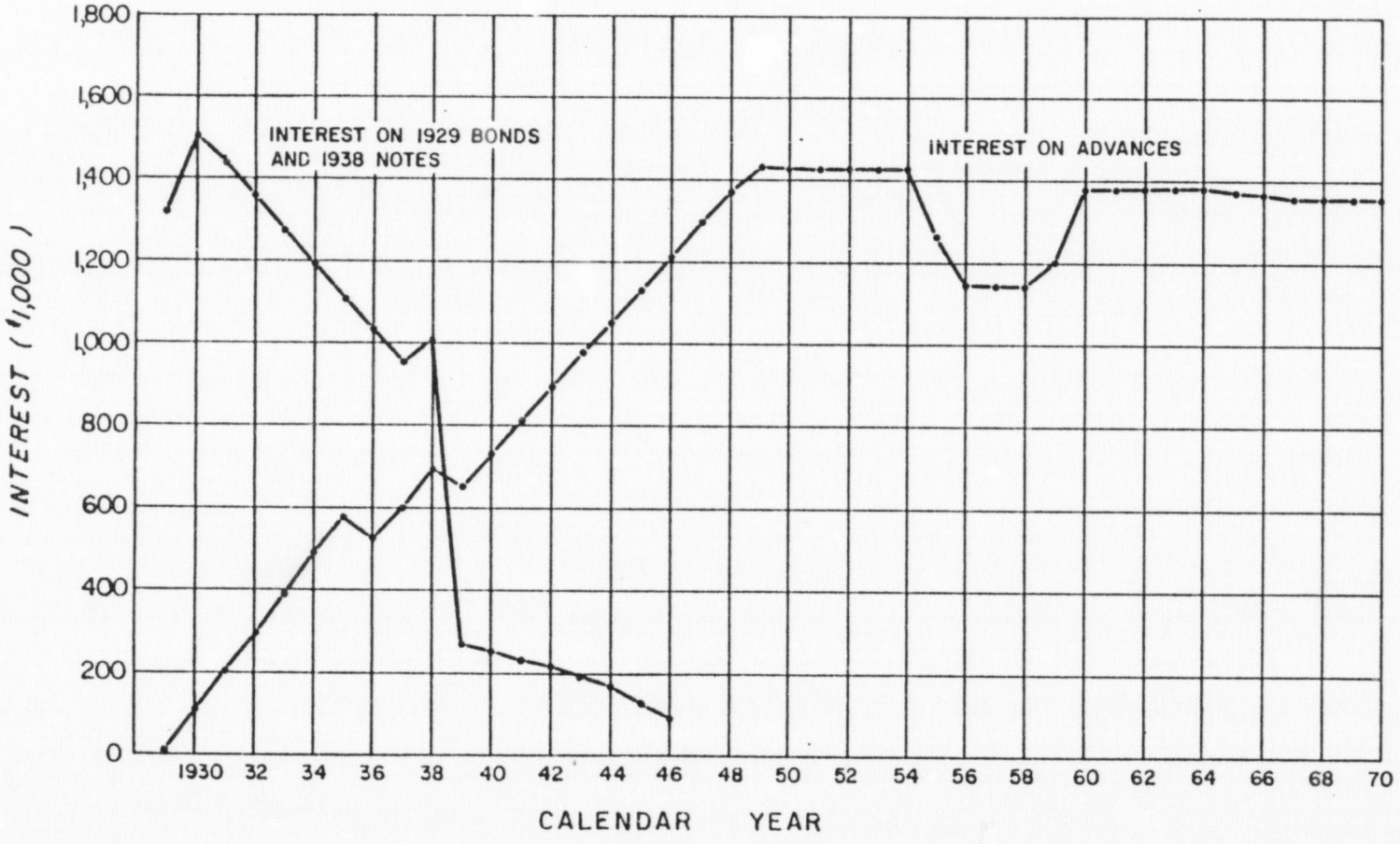
CUMULATIVE INTEREST ON NON-NEGOTIABLE DEBT TO AFFILIATED COMPANIES



SOURCE: Attachment 1, pages 1-3.

REA EXPRESS

ANNUAL INTEREST ON BONDS AND NOTES TO PUBLIC AND ON NON-NEGOTIABLE DEBT TO AFFILIATED COMPANIES

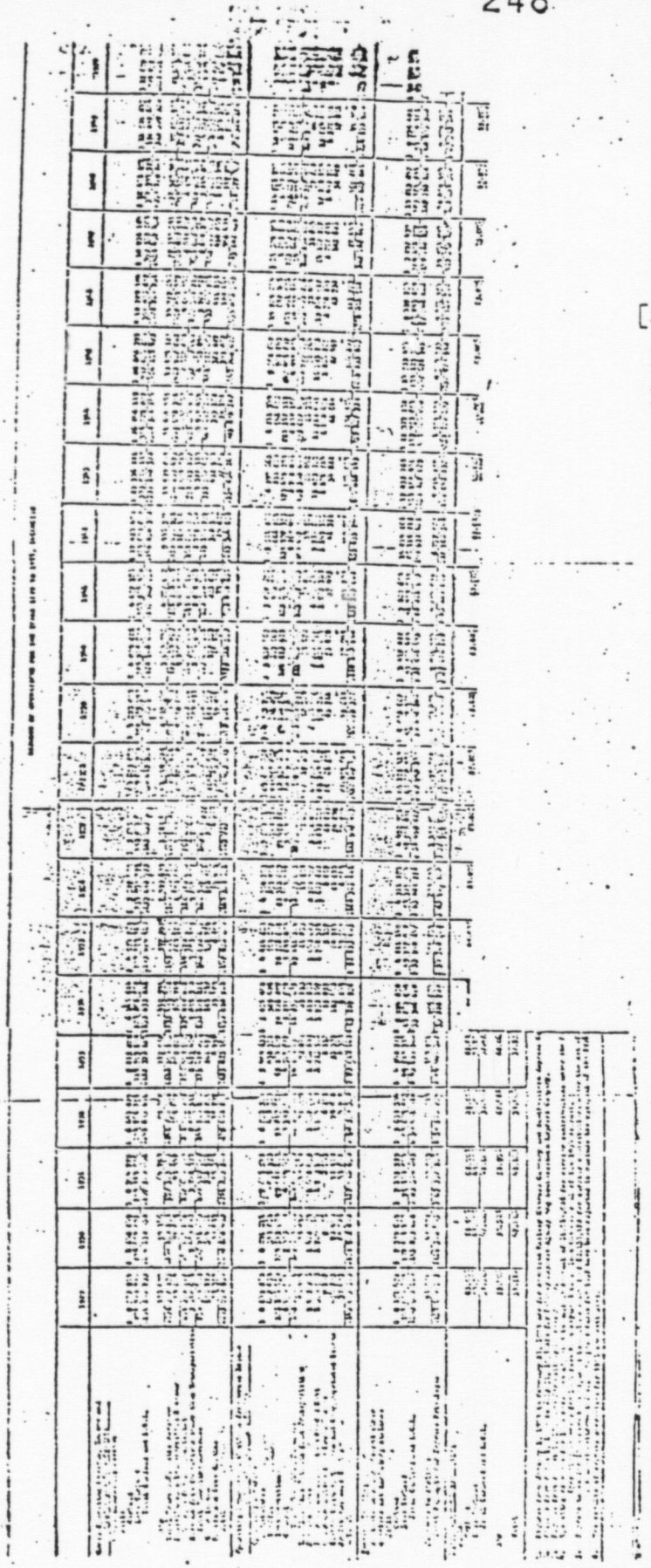


SOURCE : Attachment 1, pages 1-3.

REA EXPRESS
SUMMARY OF INTEREST EXPENSE

End of Year	Accrued Interest on Bonds and Notes	Interest Paid on the Advances	Total Interest Expense
1929	$ 1,320,000	$ -	$ 1,320,000
1930	1,513,300	66,000	1,579,300
1931	1,433,300	168,000	1,601,300
1932	1,353,400	264,000	1,617,400
1933	1,273,300	360,000	1,633,300
1934	1,193,300	455,906	1,649,206
1935	1,113,400	551,622	1,665,022
1936	1,033,300	540,191	1,573,491
1937	953,300	573,177	1,526,477
1938	1,015,600	666,416	1,682,016
1939	264,900	832,461	1,097,361
1940	254,200	730,429	984,629
1941	237,900	810,429	1,048,329
1942	217,600	890,429	1,108,029
1943	193,200	970,429	1,163,629
1944	164,900	1,050,429	1,215,329
1945	133,200	1,130,429	1,263,629
1946	93,200	1,210,428	1,303,628
1947	-	1,290,429	1,290,429
1948	-	1,370,428	1,370,428
1949	-	1,430,428	1,430,428
1950	-	1,430,428	1,430,428
1951	-	1,430,428	1,430,428
1952	-	1,430,428	1,430,428
1953	-	1,430,428	1,430,428
1954	-	1,430,428	1,430,428
1955	-	1,286,944	1,286,944
1956	-	1,143,651	1,143,651
1957	-	1,143,651	1,143,651
1958	-	1,143,651	1,143,651
1959 (9 Months)	-	953,042	953,042
Total	$13,761,300	$28,185,139	$41,946,439

Attachment 2 (LJE-2)
Page 1 of 2



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[Shows data similar to page 2 (1947-56) for period 1929-50.]

RESULTS OF OPERATIONS FOR THE YEARS 1947 TO 1956, INCLUSIVE

1

SYSTEM

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Line No.
Gross Operating Revenue, Income and Profit and Loss Credits											
Express-Domestic Revenue											
Rail:											
Carload	$ 10 938 163	$ 12 486 631	$ 11 501 619	$ 12 629 178	$ 10 884 057	$ 12 981 730	$ 12 745 315	$ 11 852 397	$ 12 672 896	$ 11 417 584	1
Less Carload	369 593 424	382 423 199	302 087 471	276 071 927	215 608 126	308 575 779	343 316 975	321 475 609	328 455 339	341 952 783	2
Total Carload and L.C.L.	$10 531 507	$396 909 830	$313 589 120	$288 657 105	$200 452 183	$321 557 509	$356 062 270	$333 289 008	$341 116 205	$353 370 367	3
Air	17 992 501	18 503 926	17 272 354	22 903 131	30 675 272	32 364 802	34 238 950	33 218 162	40 316 233	42 205 970	4
Total Express-Domestic Revenue	$428 067 008	$415 413 756	$330 861 474	$311 556 236	$317 167 455	$353 922 311	$390 301 220	$366 537 168	$381 432 438	$395 576 337	5
Miscellaneous Transportation Revenue	8 961 318	7 044 336	4 869 698	3 618 845	2 597 733	2 374 676	1 475 854	1 316 243	1 587 742	1 767 268	6
Charges for Transportation	$437 031 405	$422 458 092	$335 731 172	$315 177 081	$319 765 188	$356 296 987	$391 777 073	$367 855 411	$383 020 180	$397 343 605	7
Revenue from Operations other than Transportation	5 562 848	5 067 041	4 876 816	4 964 004	4 709 023	5 239 852	4 975 314	4 838 610	4 914 041	5 022 283	8
Total Operating Revenues	$442 594 254	$427 525 133	$340 607 988	$320 141 085	$324 474 211	$361 536 839	$396 752 387	$372 694 021	$387 934 221	$402 365 888	9
Other Income	427 474	1 122 399	1 182 044	1 047 404	1 054 935	1 113 476	1 281 853	1 280 093	1 534 144	2 295 458	10
Profit and Loss Credits	356 499	112 234	314 141	99 344	101 204	55 550	43 576	127 849	184 745	651 372	11
Total	$443 378 227	$428 759 766	$342 104 173	$321 287 833	$325 630 421	$362 705 865	$398 077 816	$374 100 962	$389 655 411	$405 312 718	12
Operating Expenses, Deductions from Gross Income and Profit and Loss Debits											
Operating Expenses											
Maintenance	$ 11 411 815	$ 11 894 029	$ 10 346 589	$ 8 660 161	$ 8 843 600	$ 10 957 289	$ 10 819 971	$ 10 430 350	$ 10 949 382	$ 13 743 440	13
Traffic	1 299 921	1 441 431	1 433 051	3 165 053	3 475 502	3 736 169	3 711 185	3 966 220	4 055 652	4 516 220	14
Transportation	265 788 518	253 746 653	214 272 261	187 027 693	187 050 544	207 399 229	202 137 310	193 587 672	155 178 655	207 592 287	15
General	10 237 358	10 125 956	9 198 553	9 033 736	10 151 612	10 824 635	10 770 900	13 449 638	15 711 523	15 141 905	16
Total Operating Expenses	$288 737 612	$277 208 069	$235 250 454	$207 886 643	$209 521 258	$232 917 322	$227 439 366	$221 433 880	$226 295 212	$241 393 852	17
Uncollectible Revenue from Transportation	33 853	37 650	44 886	33 818	20 527	16 328	12 831	21 163	22 377	28 346	18
Express Taxes	24 815 598	17 886 371	15 852 619	11 279 839	13 672 599	15 091 647	14 739 974	13 957 374	15 034 216	17 514 767	19
Interest and Discount on Funded Debt	1 297 695	1 149 754	1 502 970	1 487 553	1 472 053	1 456 647	1 441 299	1 430 743	1 322 056	1 625 503	20
Other Deductions from Gross Income	105 826	52 420	17 822	838 641	32 101	30 004	1 411	2 748	60 258	28 167	21
Profit and Loss Debits	27 165	167 686	21 390	169 261	199 239	86 965	13 607	12 240	9 099	13 219	22
Total	$314 377 449	$296 501 950	$252 690 151	$221 896 755	$224 947 867	$249 598 913	$243 658 145	$236 858 146	$242 746 218	$260 604 854	23
Express Privileges											
Payments to railroads and other carriers not including airlines											
Rail:											
Carload	$ 9 227 459	$ 10 613 636	$ 9 776 402	$ 10 734 801	$ 9 251 449	$ 11 034 471	$ 10 833 518	$ 10 654 251	$ 11 405 607	$ 10 275 826	24
Less Carload	109 134 456	108 876 117	70 135 951	73 107 232	75 838 327	125 238 134	126 062 708	109 891 336	114 012 655	111 110 455	25
Total Carload and L.C.L.	$118 491 695	$119 489 753	$ 79 912 353	$ 83 842 033	$ 85 089 776	$136 272 605	$136 896 226	$120 555 593	$125 418 262	$121 386 281	26
Payments to Airlines	10 588 923	10 458 013	9 280 669	13 040 342	15 662 888	16 844 667	17 526 122	16 685 628	20 860 585	20 335 553	27
Total Payments for Express Privileges	$129 080 618	$129 947 766	$ 89 193 022	$ 96 882 375	$100 752 664	$153 117 272	$154 422 348	$137 241 221	$146 278 847	$141 721 834	28
Express Privileges Ratios											
Rail:											
Carload	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	89.90%	90.00%	90.00%	29
Less Carload	27.31%	28.47%	23.22%	26.49%	27.52%	35.93%	35.72%	34.19%	34.71%	33.38%	30
Total Carload and L.C.L.	28.85%	30.26%	25.68%	29.05%	27.70%	37.26%	36.15%	36.17%	36.71%	35.21%	31
Air	60.33%	56.52%	53.73%	56.95%	51.06%	52.06%	51.19%	50.19%	51.76%	48.30%	32
Total	30.14%	31.43%	26.96%	31.10%	31.77%	38.87%	39.56%	37.49%	38.35%	36.60%	33

NOTE: The figures shown above are for Railway Express Agency, Incorporated, and its motor carrier subsidiaries combined. These figures do not agree with figures in the Annual Report of Railway Express Agency, Incorporated, to the Interstate Commerce Commission (Form R) because the revenues and expenses of the two motor carrier subsidiaries are not included in the revenue and expense accounts of the parent company. The net results of operations of the subsidiary companies are included in account No. 306, "Separately Operated Properties - Profit," under "Other Income," or account No. 322, "Separately Operated Properties - Loss," under "Other Deductions," and are so included in the parent company's report, Form R.

Attachment 3 (LJE-3)
Page 1 of 1

New York, Jan 22, 1947

SUBJECT: In Re: Leslie Roecker vs. Railway Express Agency, Incorporated, et al.

W. U. T. C.
JAN 22 1947

Mr. C. C. Evans,
General Attorney,
New York, N. Y.

JAN 27 1947

Dear Sir:

Referring to your letter of January 21, requestin evidence as to the financial status of Railway Express Age in connection with the above entitled suit:

Attached is General Balance Sheet as of November 30, 1946, the latest date for which figures are available, of Railway Express Agency, Incorporated, which shows the following information:

Question 1.

Total capitalization of Railway Express Agency, Incorporated, $25,508,570.27, made up of Capital Common Stock Issued and Outstanding $100,000.00 and Non-Negotiable Debt to Affiliated Companies-Advances $25,408,570.27.

Question 2.

Railway Express Agency, Incorporated, has no surplus. It is a non-profit organization as the revenues and income in excess of operating expenses, taxes and other deductions (designated as "Express Privileges-Dr." in the I.C.C. Classification of Accounts) are paid to the carriers parties to the Standard Agreement for Express Operations.

Question 3.

The net worth of Railway Express Agency, Incorporated, as of November 30, 1946, was $25,508,570.27, which is computed by deducting from the Total Assets shown on the balance sheet ($90,408,171.96) the total Current Liabilities, Deferred Liabilities and Unadjusted Credits ($64,899,601.69).

Yours truly,

Railway Express Agency
By W. A. Bellinger

Vice President.

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REA EXPRESS
SHARE OF REVENUE REA LOST AS A RESULT OF
CONVERSION FROM UNIFORM EXPRESS CONTRACT
TO THE EXPRESS OPERATIONS AGREEMENT IN 1929
(1929-1961)

ar	Express Privileges Standard Agreement	Base Rate (2.5 Percent)	Limitations of Base	REA Would Retain
	(000)			
29 (Ten Mos.)	$119,284.0	$2,982,100	$ 691,500	$ 2,290,600
30	105,720.7	2,643,000	473,200	2,169,800
31	73,831.6	1,845,800	73,400	1,772,400
32	47,005.2	1,175,100	-	1,175,100
33	44,303.1	1,107,600	-	1,107,600
34	50,212.6	1,255,300	-	1,255,300
35	51,327.6	1,283,200	-	1,283,200
36	59,004.8	1,475,100	145,700	1,329,400
37	56,597.9	1,390,000	150,100	1,239,900
38	57,641.4	1,441,000	179,400	1,261,600
39	51,636.6	1,290,900	105,500	1,185,400
40	53,018.2	1,325,500	116,600	1,208,900
41	55,680.5	1,392,000	78,700	1,313,300
42	85,219.7	2,130,500	468,100	1,662,400
43	117,116.0	2,927,900	1,103,700	1,824,200
44	118,648.9	2,966,200	1,198,600	1,767,600
45	121,875.4	3,046,900	1,268,300	1,778,600
46	86,805.2	2,170,100	559,900	1,610,200
47	107,807.8	2,695,200	844,200	1,851,000
48	107,721.3	2,693,000	839,300	1,853,700
49	69,153.6	1,728,800	-	1,728,800
50	72,206.4	1,805,200	-	1,805,200
51	75,048.1	1,876,200	2,300	1,873,900
52	124,400.1	3,110,000	854,300	2,255,700
53	125,691.2	3,142,300	889,000	2,253,300

REA EXPRESS
SHARE OF REVENUE REA LOST AS A RESULT OF
CONVERSION FROM UNIFORM EXPRESS CONTRACT
TO THE EXPRESS OPERATIONS AGREEMENT IN 1929
(1929-1961)

Year	Express Privileges Standard Agreement	Base Rate (2.5 Percent)	Limitations of Base	REA Would Retain
1954	$108,588.2	$2,714,700	$559,300	$ 2,155,400
1955	113,740.2	2,843,500	285,600	2,557,900
1956	112,207.0	2,805,200	-	2,805,200
1957	88,676.8	2,216,900	-	2,216,900
1958	87,345.6	2,183,600	-	2,183,600
1959	114,087.2	2,852,200	-	2,852,200
1960	92,210.4	2,305,300	-	2,305,300
1961(6 Mos.)	40,495.6	1,012,400	-	1,012,400
				$58,946,000

Source: I.C.C. Annual Reports.
Uniform Express Contract of 1923.
Company Records.

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Attachment 4 (LJE-4)
Page 2 of 2

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REA EXPRESS
PROFIT EARNED BY REA EXPRESS
IN THE AIR EXPRESS BUSINESS
THAT WAS TAKEN BY THE RAILROADS
(1951-1959)

Year	Profit[1/]	Activities of Sales Force of Traffic Department 3% of Gross Revenue[2/]	Total
1951	$ 950,600		$ 950,600
1952	964,700		964,700
1953	1,051,200		1,051,200
1954 (Seven Months)	577,200		577,200
1954 (Five Months)		$ 471,400	471,400
1955		1,209,500	1,209,500
1956		1,262,300	1,262,300
1957		1,105,700	1,105,700
1958		1,229,700	1,229,700
1959 (Seven Months)		782,400	782,400
Total	$3,543,700	$6,061,000	$9,604,700

1/ Line 1(d) of AES 37 reports.
2/ Line A-4 of AES 37 reports.

Sources: Air Express Service (AES) Form 37 reports.
Air Express Contracts effective January 1, 1951 and August 1, 1954.

REA EXPRESS
SUMMARY OF AMOUNTS PAID TO RAIL CARRIERS
RETURN ON INVESTMENT

(January 1, 1963-December 31, 1968)

	Eastern	Southern	Western	Mountain	Total Paid
Rate 1/1/63 to 6/30/64	.000375	.000266	.000308	.000439	
Car Foot Miles: (000) Omitted					
1/1/63 to 6/30/63	1,813,249	925,557	1,488,079	726,987	
7/1/63 to 6/30/64	3,838,116	1,975,634	3,166,804	1,568,063	
7/1/64 to 12/31/64	2,024,841	1,050,250	1,661,526	765,084	
	7,676,206	3,951,441	6,316,409	3,060,134	
Amount	$2,878,600	$1,051,100	$1,945,500	$1,343,400	$7,218,600
Rate 1/1/65 to 12/31/68	.000372	.000238	.000344	.000293	
Car Foot Miles: (000) Omitted					
1/1/65 to 6/30/65	1,860,806	1,000,273	1,501,701	707,529	
7/1/65 to 12/31/65	2,016,794	929,424	1,525,409	738,415	
1/1/66 to 6/30/66	1,687,819	746,101	1,260,477	595,535	
	5,565,419	2,675,798	4,287,587	2,041,479	
Amount	$2,070,300	$ 636,900	$1,474,900	$ 598,200	$4,780,300

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Attachment 6 (LJE-6)
Page 1 of 2

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REA EXPRESS
SUMMARY OF AMOUNTS PAID TO RAIL CARRIERS
RETURN ON INVESTMENT
(January 1, 1963-December 31, 1968)

	Eastern	Southern	Western	Mountain	Total Paid
7/1/66 to 12/31/66	1,785,980	761,842	1,321,402	643,035	
1/1/67 to 6/30/67	1,533,266	650,690	1,205,219	580,842	
7/1/67 to 12/31/67	1,410,808	557,191	1,111,075	555,167	
1/1/68 to 6/30/68	1,136,868	295,274	720,265	401,980	
7/1/68 to 12/31/68	855,258	85,271	632,037	362,969	
	6,722,180	2,350,268	4,989,998	2,543,993	
Amount	$2,500,700	$ 559,300	$1,716,600	$ 745,400	$ 5,522,000
Total Amount Paid	$7,449,600	$2,247,300	$5,137,000	$2,687,000	$17,520,900

Source: Standard Express Operating Agreement, 1959.
Company Records.

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Attachment 6 (LJE-6)
Page 2 of 2

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REA EXPRESS
ADDITIONAL EXPENSE TO REA EXPRESS
FROM INCLUSION OF COMMUTATION EXPENSES
IN OUT-OF-POCKET LINE HAUL COSTS FOR THE
EASTERN ROADS

(January 1, 1963 to December 31, 1968)

Period	Line Haul Cost at 74% Basis	Commutation Cost at Nine Percent	Adjusted Cost at 74% Basis
1/1/63-6/30/63	$ 13,046,300	$ 1,174,200	$ 11,872,100
7/1/63-6/30/64	27,834,000	2,505,100	25,328,900
7/1/64-12/31/64	14,829,900	1,334,700	13,495,200
1/1/65-6/30/65	14,160,700	1,274,500	12,886,200
7/1/65-6/30/66	28,833,000	2,595,000	26,238,000
7/1/66-12/31/66	14,439,600	1,299,600	13,140,000
1/1/67-12/31/68	39,909,200	3,591,800	36,317,400
Total Six Years	$153,052,700	$13,774,900	$139,277,800

Note: Basis for 9% is contained in minutes of subcommittee of Express Accounting Committee, 2/3/67.

Source: Company Records.

REA EXPRESS
SUMMARY OF ADDITIONAL COST TO REA
(EXCLUDING ROI) RESULTING FROM THE USE OF
A 74% OUT-OF-POCKET BASIS COMPARED TO A
OUT-OF-POCKET BASIS

(January 1, 1963-December 31, 1968)

Period	Cost at 74% Basis	Cost at 70% Basis	Expense Excess by Using 74% Basis Over 70% Basis
1/1/63-6/30/63	$ 33,207,800	$ 31,412,800	$ 1,795,000
7/1/63-6/30/64	71,256,500	67,404,800	3,851,700
7/1/64-12/31/64	37,527,200	35,498,700	2,028,500
1/1/65-6/30/65	34,066,100	32,224,700	1,841,400
7/1/65-6/30/66	65,735,000	62,181,600	3,553,400
7/1/66-12/31/66	32,495,700	30,739,200	1,756,500
1/1/67-12/31/68	87,732,500	82,990,000	4,742,500
Total Six Years	$362,020,800	$342,451,800	$19,569,000

Source: Minutes of REA Board of Directors meeting, November 20, 1961.
Company Records.

REA EXPRESS
ADDITIONAL EXPENSE TO REA FROM INCLUSION
IN LINE HAUL COSTS OF FREIGHT TRAINS
AT PASSENGER TRAIN RATES FOR THE EASTERN ROADS

(January 1, 1963 to December 31, 1968)

Period	Line Haul Cost at 74% Basis	Credit for Freight Service (2.4%)	Adjusted Cost at 74% Basis
1/1/63-6/30/63	$ 13,046,300	$ 313,100	$ 12,733,200
7/1/63-6/39/64	27,834,000	668,000	27,166,000
7/1/64-12/31/64	14,829,900	355,900	14,474,000
1/1/65-6/30/65	14,160,700	339,900	13,820,800
7/1/65-6/30/66	28,833,000	692,000	28,141,000
7/1/66-12/31/66	14,439,600	346,600	14,093,000
1/1/67-12/31/68	39,909,200	957,800	38,951,400
Total Six Years	$153,052,700	$3,673,300	$149,379,400

Note: Basis for 2.4% is contained in minutes of a meeting of subcommittee of the Express Accounting Committee 2/3/67.

Source: Company records.

REA EXPRESS
ADDITIONAL COST TO REA RESULTING FROM INCLUSION
OF INJURIES TO RAILROAD EMPLOYEES IN LINE HAUL COST BASIS

Summary

Period	Eastern (.000092)[1/]	Southern (.000055)[1/]	Western (.000062)[1/]	Mountain (.000046)[1/]	Total
/63-6/30/63	$ 166,800	$ 50,900	$ 92,300	$ 33,400	$ 343,400
/63-6/30/64	353,100	108,700	196,300	72,100	730,200
/64-12/31/64	186,300	57,800	103,000	35,200	382,300
/65-6/30/65	171,200	55,000	93,100	32,500	351,800
/65-6/30/66	340,800	92,200	172,700	61,400	667,100
/66-12/31/66	164,300	41,900	81,900	29,600	317,700
/67-12/31/68	454,100	87,400	227,500	87,400	856,400
al Six Years	$1,836,600	$493,900	$966,800	$351,600	$3,648,900

These 1962 rates per car foot mile included in the out-of-pocket expenses for the respective groups are taken from a letter from R.A. Navin, Assistant Controller to J.C. Ashton, dated April 13, 1966, with regard to "Injuries to Employees."

rce: Calculation based upon above rates and company records.

Attachment 10 (LJE-10)
Page 1 of 1

REA EXPRESS
EXPENSES FOR LOSS AND DAMAGE TO COMMERCIAL TRAFFIC AND PERSONAL INJURY TO REA EMPLOYEES OWED TO REA BY THE CARRIERS
(1969-1973)

Year	Damage Payments Owed REA
1969	$105,000
1970	119,700
1971	111,900
1972	101,300
1973	62,100
Total Five Years	$500,000

Source: Company Records (Recorded in Bill Collectible sheets).

Attachment 12 (LJE-12)
Page 1 of 1

REA EXPRESS
SUMMARY OF REA CLAIMS AGAINST RAILROADS
AFTER 7/1/61

Excessive Car Foot Mile Payments:		
Return on Investment @2.5%	$17,520,900	
Out-of-Pocket Cost from 74% to 70%	19,569,000	
Commutation Costs Included-East	13,774,900	
Freight Service Priced at Passenger Costs-East	3,673,300	
Personal Injury Costs of Railroad-East	3,648,900	$ 58,187,000
Payments by REA for Personal Injury and Loss and Damage Claims made in Accord with Articles 10A and 10B of the 10/1/59 SEOA for which Reimbursement has not been Received		500,000
Interest on Notes Payable to Railroads After July 1, 1961		13,027,000
Total Claims		$ 71,714,000
Less: Railroads Share of Additional Amounts Available for Distribution Resulting from Above Items		26,959,400
Amount Due REA		$ 44,754,600

DIRECTORS COMMON TO THE RAILROADS AND THE UNDERWRITERS/INVESTMENT BANKERS HANDLING THE 1929 AND 1938 BONDS AND NOTES

Minutes of Counsel December 6, 1928 reflect a suggestion by a railroad attorney discussing potential anti-trust problems that it would be advisable to have the financing handled by neutral bankers. However, this suggestion was not followed. This attachment shows that many interlocks existed between the railroads and underwriters, investment bankers and trustees of the 1929 REA Bonds and 1938 REA Notes.

DIRECTORS COMMON TO THE RAILROADS AND THE
UNDERWRITERS/INVESTMENT BANKERS HANDLING
THE 1929 AND 1938 BONDS AND NOTES

Guaranty Trust Company/ Guarantee Company Directors	1929 Railroad Directorships
E.J. Berwind	Interboro Rapid Transit[1/] Atchison, Topeka & Santa Fe Gulf, Colorado and Santa Fe Kansas City, Mexico and Orient Santa Fe and Pacific Santa Fe, Prescott and Phoenix
Marshall Field	Chicago and Northwestern Chicago, St. Paul, Minneapolis and Omaha
R.W. Goelet	Illinois Central Union Pacific
P.G. Gossler	Cincinnati, Newport and Covington[1/] Cincinnati, Covington and Erlanger Cincinnati, Covington and Rosedale Cincinnati, West Covington and Ludlow Covington and Latonia
W.A. Harriman	Illinois Central Los Angeles & Salt Lake Oregon Short Line Oregon Washington Railroad & Navigation Co. Union Pacific
A.H. Harris	New York Central[2/] (Approximately 30 small railroads)
C.F. Kelley	Butte Anaconda & Pacific Tooele Valley
Thomas W. Lamont	Chicago & Erie
G.M.-P. Murphy	N.Y. Railways
W.C. Potter	Atchison Topeka & Santa Fe Chicago and Eastern Illinois Santa Fe Pacific
C.H. Sabin	International-Great Northern Missouri Pacific New Orleans, Texas and Mexico New York Railways Texas & Pacific

DIRECTORS COMMON TO THE RAILROADS AND THE
UNDERWRITERS/INVESTMENT BANKERS HANDLING
THE 1929 AND 1938 BONDS AND NOTES

Guaranty Trust Company/ Guarantee Company Directors	1929 Railroad Directorships
J.R. Swan	Chicago & Eastern Illinois
G. Whitney	N.J. & N.Y. R.R.
M.P. Callaway	American Great Southern
Kuhn, Loeb and Company Partners	
Felix M. Warburg	Staten Island Rapid Transit
Otto H. Kahn	Los Angeles and Salt Lake
Mortimer L. Schiff	Los Angeles and Salt Lake
Jerome J. Hanauer	Hudson & Manhattan Yazoo & Mississippi Valley
Lewis Strauss	Susquehanna and N.Y.
J.P. Morgan and Company Partners	
Edward T. Stotesbury	Reading 1/ Lehigh and Hudson River
Charles Steele	Atchison, Topeka & Santa Fe Chicago, Great Western
Thomas W. Lamont	(See Guarantee Trust Company Listing)
Thomas Cochran	Copper River and Northwestern Nevada Northern
George Whitney	Copper River and Northwestern N.J. and N.Y. R.R.
R.C. Leffingwell	Northern Pacific
Arthur M. Anderson	N.Y., Susquehanna & Western

1/ Chairman of the Board or Chief Executive Officer.
2/ Chairman of the Executive Committee.

Source: Directory of Directors in the City of New York, 1929/30, J.S. Little and Ives Company, New York.
Moody's Analyses of Investments-American and Foreign, 1929, Moody's Investors Service, New York.
Security Dealers of North America-1929 Edition, Herbert D. Seibert and Co., New York.
Who's Who in America, 1928/29, The A.N. Marquis Company, Chicago.

DIRECTORS COMMON TO THE RAILROADS AND THE
UNDERWRITERS/INVESTMENT BANKERS HANDLING
THE 1929 AND 1938 BONDS AND NOTES

Guaranty Trust Company Officer or Director	1938 Railroad Directorships
H.W. DeForrest	Southern Pacific Texas & New Orleans Railroad
R.W. Goelet	Illinois Central Union Pacific
W.A. Harriman	Union Pacific[1/] Los Angeles & Salt Lake[1/] Oregon Short Line [1/] Oregon, Washington Railroad & Navigation Co.[1/] Canton, Aberdeen & Nashville Central of Georgia Dubuque & Sioux St. Joseph & Grand Island Yazoo & Mississippi Valley
J.A. Hartford	New York, New Haven & Hartford
T.W. Lamont	Atchison, Topeka & Santa Fe Santa Fe Pacific R.R.
W.C. Potter	Atchison, Topeka & Santa Fe
E.W. Stetson	Illinois Central[2/]
George Whitney	New York Central West Shore Railroad
E.D. Duffield	United New Jersey Railroad and Canal Co.
A.C. Dorrance	Lehigh Valley West Jersey and Seashore Baltimore & Eastern Reading Port Reading
L.E. Zacher	St. Joseph, South Bend and Southern

DIRECTORS COMMON TO THE RAILROADS AND THE
UNDERWRITERS/INVESTMENT BANKERS HANDLING
THE 1929 and 1938 BONDS AND NOTES

Kuhn, Loeb and Company Partners	1938 Railroad Directorship
Lewis L. Strauss	Susquehanna and New York
Sir William Wiseman	Kansas City Southern
John M. Schiff	Los Angeles and Salt Lake
Frederick M. Warburg	Los Angeles and Salt Lake

Morgan Stanley Company Officers
None

1/ Board Chairman as well as Director.
2/ Member of Executive Committee.

Source: Moody's Analyses of Investments-American and Foreign-Banks, 1938, Moody's Investor's Service, New York.
Security Dealers of North America-1938 Edition, Herbert D. Seibert & Co., New York.
Who's Who in Commerce and Industry-1938, Institute for Research in Biography, Inc., New York.

Attachment 14 (LJE-14)
Page 1 of 2

RAILWAY EXPRESS AGENCY
Incorporated
OFFICE OF THE PRESIDENT
230 PARK AVENUE

L. O. HEAD,
President

NEW YORK May 17, 1948

Mr. F. W. Charske
Chairman, Finance Committee
Railway Express Agency, Inc.
c/o Union Pacific Railroad Co.
120 Broadway
New York, N. Y.

Sources of Funds Available
for Capital Expenditures

Dear Mr. Charske -

Referring to recent discussion regarding subject matter:

Expenses incident to the issuance of the bonds and notes and premiums paid upon redemption of bonds and notes prior to maturity were:

	Expenses	Premium
Bonds	$ 62,341.14	$420,000.00
Notes	44,886.65	12,000.00
Total	$107,227.79	$432,000.00

As explained during our discussion, such amounts were recovered by including them as deductions from income in calculating Rail Transportation Revenue.

With respect to the discount of $720,000.00 on the sale of the original bond issue relative to which you expressed the thought that item should have been omitted from the tabulation on page 3 of the memorandum of February 20: The tabulation showed a difference of $3,391,429.73 between the original bond issue of $32,000,000.00 and the amount which the Agency will receive up to the end of 1948 from the stockholders as advances to cover bond and note retirements, i.e., $28,608,570.27. Thus, the Agency's capital liabilities have been reduced as follows:

- 2 -

Repayment of advances to stockholding railroads in February, 1936	$2,400,000.00
Repayment of advances to stockholding railroads from which stock was purchased for account of Southern Railway	252,669.07
Advances for August, 1938, not collected from Southern Railway	18,760.66
Total	$2,671,429.73

That amount plus advances by the stockholding carriers will aggregate $31,280,000.00. The way the discount of $720,000.00 was handled also has had the effect of reducing our capital liabilities by that amount since the $720,000.00 deducted from income represented the recovery of an expense - not the retirement of bonded indebtedness as do the advances. This treatment of the discount and repayment of advances has resulted in interest saving at 5% per annum. Prior to December 1, 1938, the interest rate on advances was 6%.

The thought expressed during our discussion that the unused portion of annual lump sum budgets authorized by the Board has been sufficient to cover special appropriations is confirmed by the fact that during the five years 1941-1945 (1946 budget not yet closed out) budget expenditures (including expenditures amounting to $1,106,509.70 under special appropriations) were $178,000.00 less than the lump sum budget authorizations.

The attached statement should be substituted for the tabulation on page 5 of the February 20 memorandum. This statement has been brought down to date to include all special projects authorized by the Board in 1947 and 1948 which have not been completed or charged to the property accounts. Since our discussion advice of the escalation on our refrigerator cars has been received and the estimated effect has also been given consideration in the attached statement, these changes resulting in a reduction of the estimated funds available for capital expenditures at the end of 1948 to $2,540,555.77.

As requested, also attached is memorandum showing estimated requirements for equipment replacements and installment payments on refrigerator cars during the five years 1949-1953, inclusive, and estimated funds available for such requirements. The estimated equipment replacements during those years are based upon the expectation that express traffic will drop to the level of 1938-1939-1940.

Yours truly,

(Signed) L. O. HEAD

President.

MEMORANDUM OF CONFERENCE WITH MR. MAHAFFIE,
DIRECTOR OF FINANCE, JANUARY 11, 1929 - 9:00 A. M.
MESSRS. NICODEMUS AND BELL.

1. JURISDICTION OF COMMISSION:

Mr. Mahaffie stated that he had already expressed his views on the Commission's jurisdiction, namely, when we were in Washington on December 5 before Division 4. I explained to him that since that conference we had considered the matter and reached the conclusion set forth in our memorandum. He said that he had some doubt on the subject, but that the Commission in other matters where the parties interested had come before the Commission asking them to take jurisdiction had been inclined to take jurisdiction. I got the impression that we would have no real difficulty on this point.

2. THE HEARING SET FOR JANUARY 24:

(a) It will not be a proposed report case. It will be a full Commission case. It has been assigned to Commissioner Campbell, but Mahaffie probably will be the man who has to do most of the work. Unless something develops at the hearing which will require it, it will not be necessary to file briefs.

(b) Intervenors' objections:
Mr. Mahaffie said he had nothing further from National Industrial Traffic League, and that he had heard of no other objections to the Plan. I stated to him what Walter had written to me as to the N. I. T. L. objections, namely, that it did not wish the Express Company to become a merchandising organization, and they wished also to safeguard the matter of rates; and I stated that these objections were, of course, not contrary to anything that the Express Agency was contemplating in these applications.

(c) Testimony:
I outlined our plan for having Mr. Storey make a complete statement of the express business, the nature and the purpose of the plan, and confining our testimony to matters of a general nature. This will be satisfactdry to Mr. Mahaffie. We discussed the substantiation of the price to be paid for the real estate, and I told him how the appraisals had been verified by the carriers, and he seemed to take no exception to this method. We stated we would file a statement of the total appraisals, but, after discussion, said that we preferred not to put the details in the record. He himself suggested that it might lead to taxation on the values paid. As set forth below, he will expect a justification of the price at which the debentures are proposed to be sold, if it is on more than a 5% basis. We told him we would have Mr. Lutz, of the Express Company, present to supply any information desired, and that we would be prepared to cover fully any kind of objections to the Plan.
We also outlined the conditions upon which the Williams roads had come in, and told him of the agreement to put into the record Counsel's ruling upon the sinking fund provision.

3. CONTRACT WITH A. R. E.:

We acquainted Mr. Mahaffie with the present status of the A. R. E. contract, and told him of the necessity for prompt action by the Commission, which I think he appreciates, and will undoubtedly do his best to forward.

4. FINANCING:

We outlined the conferences with Messrs. Anderson and Hanauer, told him of their recommendations with reference to making the debenture issue a 20-year obligation, maturing semi-annually, like an equipment trust. We advised him of the

difficulty in the sale of such security, because of its unavailability for savings banks, and the question as to whether it is an insurance investment; also mentioning the fact that the Express Agency will not under its contract be able to build up a reserve fund which will be security for the bonds. Mr. Nicodemus described Mr. Storey's conference with the bankers on the 7th instant, and said that, tentatively, they had suggested that the bond bear a 5% coupon, be offered to the public at par, and sold to the bankers at 97½. Mahaffie stated that, if the money was going to cost the Express Company more than 5%, he would have to have some showing made as to the price. It will be agreeable to have this showing made at the hearing on the 24th, if a definite price is agreed on at that time, subject to the approval of the Commission. Mahaffie also stated that the Commission would not act upon the Finance Docket Application until the details had been supplied. We told him the Trust Indenture is now in process of preparation.

5. INTERLOCKING DIRECTORATES:

The Commission will not act on a blanket application. It will be necessary to have the individual applications filed in the usual course.

6. GENERAL:

Mr. Mahaffie raised other questions which he said were in his mind:

(a) The validity of the applications under Paragraph (2) of Section 5. The question he had in mind is whether these applications filed by the Agents are a

compliance with Paragraph (2) of Section 5, which requires such applications to be filed by carriers.

(b) The other question was as to the sinking fund provisions of the financing plan, and he inquired whether the requirement that the carriers pay off the bonds semi-annually would have any effect on the Express Agency's rates. We told him none whatever. He said he was not a rate man, but did not wish to have anything in this proceeding that would afford a claim that it should have been looked at from a rate standpoint. We told him that these semi-annual instalments were simply capital investments by the carriers, and the carriers would be entitled to a return on them, whether they paid for them all at once or semi-annually.

M. L. B.

1/12/29.

MLB's

cc- Messrs. H. W. Clark,
F. C. Nicodemus, Jr.

ANNUAL REPORT

OF

RAILWAY EXPRESS AGENCY, INCORPORATED

TO THE

INTERSTATE COMMERCE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 1959

Name, official title, and office address of officer in charge of correspondence with the Commission regarding this report:

(Name) R. A. SAUER (Title) VICE PRESIDENT AND CONTROLLER

(Office address) 219 EAST 42ND STREET, NEW YORK 17, N.Y.

(Street and number, city, zone, and State)

FUNDED DEBT

Designation of Bond or Obligation	TERM Date of Issue	TERM Date of Maturity	Total Par Value Authorized	Total Par Value Outstanding	TOTAL PAR VALUE HELD BY RESPONDENT In Treasury	Pledged as Collateral	In Sinking or Other Funds	Total Par Value Not Held by Respondent	INTEREST Rate	When Payable	Amount Accrued during the Year	Amount Paid during the Year
Collateral Trust Bonds				NONE								
Miscellaneous Funded Obligations:												
Non-Negotiable Notes to Affiliated Companies - Advances ∅	-	-	$ -	$27 637 053		NONE		$27 637 053	#	Semi-annually	$1 203 201	$ 953 042
Equipment Obligations - Automotive Equipment - Conditional Sales Agreement	-	Quarterly Installments to April 1, 1961	-	2 404 423		NONE		2 404 423	2-1/4%	Quarterly	67 649	76 666
Equipment Obligations - Automotive Equipment - Conditional Sales Agreement	-	Quarterly Installments to August 25, 1964	-	5 541 654		NONE		5 541 654	3-1/2%	Quarterly	220 982	222 484
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Quarterly Installments to April 1,1960	-	566 059	300	NONE		566 059	2-1/4%	Quarterly	22 306	28 674
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Quarterly Installments to December 31,1973	-	688 715	300	NONE		688 715	2-3/4%	Quarterly	19 765	20 314
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Quarterly Installments to Oct. 1, 1960	-	642 926	200	NONE		642 926	2-5/8%	Quarterly	23 691	28 062
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Quarterly Installments to Dec. 31,1973	-	450 095	200	NONE		450 095	2-7/8%	Quarterly	13 358	13 586
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Semi-Annual Installments to Dec. 1, 1962	-	2 273 880	500	NONE		2 273 880	4-1/2%	Semi-annually	125 063	127 906
Equipment Obligations - Refrigerator Cars Conditional Sales Agreement	-	Semi-Annual Installments to Dec. 1, 1972	-	7 579 600	500	NONE		7 579 600	4-3/4%	Semi-annually	360 031	360 031
Receipts Outstanding for Funded Debt				NONE								
		TOTAL	$ -	$47 784 405				$47 784 405			$2 056 046	$1 830 765

- 4% to and including September 30, 1959 and 5% from and after that date.
∅ - See details on Pages Nos. 21-A and 21-B.

Verified by KMM

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 33)	388 124 874	x x x	x x x
3	(314) Express privileges—Dr. (p. 35)	145 720 992	x x x	x x x
4	Revenue from transportation	x x x	242 403 882	x x x
5	(302) Revenue from operations other than transportation (p. 33)	x x x	4 982 678	x x x
6	Total operating revenues (p. 33)	x x x	247 386 560	x x x
7	(345) Operating expenses (p. 49)	x x x	229 684 223	x x x
8	Net operating revenue*	x x x	17 702 337	x x x
9	(316) Uncollectible revenue from transportation	x x x	30 073	x x x
10	(317) Express taxes (p. 53)	x x x	19 214 262	x x x
11	Operating income*	x x x	x x x	(1 541 998)
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	4 560	x x x
14	(304) Miscellaneous rent income	x x x	1 420	x x x
15	(305) Net income from miscellaneous physical property (p. 25)	x x x	3 308	x x x
16	(306) Separately operated properties—Profit (p. 33)	x x x	3 538	x x x
17	(307) Dividend income (p. 43)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 43)	x x x	(5)	x x x
19	(309) Income from unfunded securities and accounts	x x x	8 984	x x x
20	(310) Income from sinking and other reserve funds	x x x	1 962	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 51)	x x x	3 572 589	x x x
24	Total other income	x x x	3 596 356	x x x
25	Gross income*	x x x	x x x	2 054 358
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	20 513	x x x
29	(320) Miscellaneous taxes	x x x	1 510	x x x
30	(321) Net loss on miscellaneous physical property (p. 25)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 33)	x x x	"	x x x
32	(323) Interest on funded debt (p. 23)	x x x	2 056 046	x x x
33	(324) Interest on unfunded debt	x x x	3	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	2 651	x x x
37	Total deductions from gross income	x x x	2 080 723	x x x
38	Net income*	x x x	x x x	(26 665)
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 31)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	(26 665)

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of $ NONE

See Page 29-A

INCOME ACCOUNTS

Line No.	Item (a)	(b)	(c)	(d)
1	CREDITS			
2	I. GROSS OPERATING REVENUES			
3	(301) Charges for transportation (p.33)	$388 124 874	$	$
4	(302) Revenue from operations other than transportation (p.33)	4 982 678		
5	Total gross operating revenues		393 107 552	
	II. OTHER INCOME			
	(303) Rent from real property and equipment used jointly	4 560		
8	(304) Miscellaneous rent income	1 420		
9	(305) Net income from miscellaneous physical property (p.25)	3 308		
10	(306) Separately operated properties - Profit (p.33)	3 5[illegible]		
11	(307) Dividend income (p.43)			
12	(308) Income from funded securities (p.43)	(5)		
13	(309) Income from unfunded securities and accounts	8 984		
14	(310) Income from sinking and other reserve funds	1 962		
15	(311) Release of premiums on funded debt	-		
16	(312) Contributions from other companies	-		
17	(313) Miscellaneous income (p.51)			
18	Total other income	3 572 589		
19	Total gross operating revenues and other income		3 596 356	
			396 703 908	
20	III. PROFIT AND LOSS CREDITS			
21	(403) Profit on real property and equipment sold	24 608		
22	(404) Delayed income credits	-		
23	(405) Unrefundable overcharges	2 036		
24	(406) Miscellaneous profit and loss credits	27 273		
25	Total profit and loss credits		53 717	
26	TOTAL CREDITS			396 757 625
27	DEBITS			
28	IV. OPERATING EXPENSES, UNCOLLECTIBLE REVENUE FROM TRANSPORTATION, AND EXPRESS TAXES			
29	(315) Operating expenses (p.49)	229 684 223		
30	(316) Uncollectible revenue from transportation	30 073		
31	(317) Express Taxes (p.53)	19 214 262		
32	Total operating expenses, uncollectible revenue from transportation, and express taxes		248 928 558	
33	V. OTHER DEDUCTIONS			
34	(318) Rent for real property and equipment used jointly	-		
35	(319) Miscellaneous rents	20 513		
36	(320) Miscellaneous taxes	1 510		
37	(321) Net loss on miscellaneous physical property (p.25)	-		
38	(322) Separately operated properties - Loss (p.33)	-		
39	(323) Interest on funded debt (p.23)	2 056 046		
40	(324) Interest on unfunded debt	3		
41	(325) Amortization of discount on funded debt	-		
42	(326) Income transferred to other companies	-		
43	(327) Miscellaneous income debits	2 651		
44	Total other deductions		2 080 723	
45	VI. PROFIT AND LOSS DEBITS			
46	(415) Loss on land sold	-		
47	(416) Delayed income debits	-		
48	(417) Miscellaneous profit and loss debits	27 352		
49	Total Profit and Loss debits		27 352	
50	VII. PAYMENTS TO RAIL AND OTHER CARRIERS FOR HAULING EXPRESS			
51	(314) Payments to Rail and other Carriers for hauling express (p.35)		145 720 992	
52	TOTAL DEBITS			$396 757 625

NOTE: No net income accrued to Railway Express Agency, Incorporated, and no dividends are paid or payable on the capital stock of the Agency.

The capital stock of Railway Express Agency, Incorporated, is owned by 65 Class I railroads. There are in effect between the Agency and each of approximately 153 carriers, including 65 stockholding railroads, agreements in standard form for the conduct of express operations over its lines.

These agreements provide that there shall be ascertained the income, viz.:

1. Charges for transportation
2. Revenue from operations other than transportation
3. Other income credits
4. Profit and loss credits,

and from the total thereof shall be deducted:

1. Operating expenses
2. Taxes
3. Other deductions from income including compensation to carriers not parties to the standard form of agreement
4. Profit and loss debits;

and that remainder shall be apportioned among and paid to the carriers, parties to the standard form of agreement, according to the volume of express business handled on the respective lines as measured by gross express revenues. These payments, as well as those made to carriers not parties to the standard form of agreement, are classified as "Payments to Rail and Other Carriers for Hauling Express."

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 29) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 31.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x x x x	NONE	
2	(402) Credit balance transferred from income	x x x x x x	"	
3	(403) Profit on real property and equipment sold	x x x x x x	24 408	
4	(404) Delayed income credits*	x x x x x x	NONE	
5	(405) Unrefundable overcharges	x x x x x x	2 036	
6	(406) Miscellaneous profit and loss credits*	x x x x x x	27 273	
7	(407) Debit balance at beginning of year	NONE	x x x x x x	
8	(408) Debit balance transferred from income	26 355	x x x x x x	
9	(409) Surplus applied to sinking and other reserve funds	NONE	x x x x x x	
10	(410) Dividend appropriations of surplus (p. 31)	"	x x x x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x x x x	
12	(412) Stock discount extinguished through surplus	"	x x x x x x	
13	(413) Debt discount extinguished through surplus	"	x x x x x x	
14	(414) Miscellaneous appropriations of surplus	"	x x x x x x	
15	(415) Loss on land sold	"	x x x x x x	
16	(416) Delayed income debits*	"	x x x x x x	
17	(417) Miscellaneous profit and loss debits*	27 352	x x x x x x	
18	† ..... balance carried to Balance Sheet	NONE		
19	TOTAL	53 717	53 717	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Unpaid C.O.D. Drafts	$10,950
Unpaid Claim Drafts	5,890
Unpaid Payroll Drafts	7,366
Unpaid Expenditure Drafts	1,730
Miscellaneous	1,337
Total	$27,273

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fines imposed by U. S. Government	$ 5,930
Drafts credited to Profit and Loss in prior years, paid during current year:	
C.O.D. Drafts	15,231
Claim Drafts	1,221
Payroll Drafts	3,440
Expenditure Drafts	1,202
Miscellaneous	328
Total	$27,352

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)	Remarks (c)
		$	
1	I. TRANSPORTATION	x x x	
2	(101) Express, domestic	385 284 482	
3	(102) Express, foreign	785 560	
4	(103) Miscellaneous	2 054 832	
5	Total transportation	388 124 874	
6	II. CONTRACT PAYMENTS	x x x	
7	(104) Express privileges—Dr.	145 720 992	
8	Revenue from transportation	242 403 882	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	
10	(105) Customs brokerage fees	997 458	
11	(106) Order and commission	12 544	
12	(107) Rents of buildings and other property	114 916	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	1 724 997	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	"	
21	(116) Miscellaneous	2 132 763	
22	Total other than transportation	4 982 678	
23	Total operating revenues	247 386 560	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c)	Loss (d)
			$	$
41	Railway Express Motor Transport,			
42	Incorporated	219 East 42nd St., New York, N.Y.	1 944	
43				
44	Railway Express Agency, Incorpo-			
45	rated, of California	219 East 42nd St., New York, N.Y.	1 594	
46				
47				
48				
49				
50				
51				
52				
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58				
59				
60				
61				
62				
63				
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65				
66				
67				
68				
69				
70				
71				
72		NET TOTAL	3 538	

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$		$	$
1	x x x	INVESTMENT	x x x	x x x
2	x x x	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	x x x	x x x
3	97 829 795	(501) Real property and equipment (p. 27) — $98 415 799 / NONE	98 416 799	587 004
4	NONE	(502) Sinking funds (p. 45) — NONE / NONE	NONE	-
5	50 320	(503) Miscellaneous physical property (p. 25)	50 321	1
6	x x x	(504) Investments in affiliated companies—	x x x	x x x
7	48 500	(A) Stocks (pp. 36 and 41)	48 500	-
8	NONE	(B) Bonds (pp. 38 and 42)	NONE	-
9	"	(C) Notes	"	-
10	"	(D) Advances	"	-
11	x x x	(505) Other investments—	x x x	x x x
12	NONE	(A) Stocks (pp. 37 and 41)	NONE	-
13	1 035	(B) Bonds (pp. 39 and 42)	1 000	35#
14	NONE	(C) Notes	NONE	-
15	"	(D) Advances	"	-
16	97 929 650	Total investment	98 516 620	586 970
17	x x x	CURRENT ASSETS	x x x	x x x
18	27 799 181	(506) Cash	32 465 564	4 666 383
19	5 021	(507) Special deposits	2 095	2 926#
20	1 602	(508) Loans and notes receivable	886	716#
21	166 058	(509) Traffic balances receivable	252 494	86 436
22	15 844 737	(510) Net balances receivable from agents and messengers	14 693 472	1 151 265#
23	4 981 453	(511) Miscellaneous accounts receivable	4 011 445	970 008#
24	1 401 493	(512) Material and supplies	699 655	701 838#
25	100	(513) Interest, dividends, and rents receivable	100	-
26	1 750	(514) Working fund advances	975	775#
27	1 543 559	(515) Other current assets	1 512 143	31 416#
28	51 744 954	Total current assets	53 638 829	1 893 875
29	x x x	DEFERRED ASSETS	x x x	x x x
30	x x x	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	x x x	x x x
31	75 457	(516) Insurance and other reserve funds (p. 45) — $75 382 / NONE	75 382	75#
32	NONE	(517) Provident funds (p. 45) — NONE / "	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 45) — " / "	"	-
34	"	(519) Advance payments on contracts	"	-
35	14 465	(520) Other deferred assets	31 870	17 405
36	89 922	Total deferred assets	107 252	17 330
37	x x x	UNADJUSTED DEBITS	x x x	x x x
38	222 087	(521) Rents and insurance premiums paid in advance	145 667	76 420#
39	522 405	(522) Taxes paid in advance	558 644	36 239
40	NONE	(523) Discount on capital stock	NONE	-
41	"	(524) Discount on funded debt	"	-
42	2 312 854	(525) Other unadjusted debits — Par value of holding at close of year	1 822 846	490 008#
43	x x x	(526) Securities issued or assumed—Unpledged (pp. 19 and 23) — NONE	x x x	x x x
44	x x x	(527) Securities issued or assumed—Pledged (pp. 19 and 23) — "	x x x	x x x
45	3 057 346	Total unadjusted debits	2 527 157	530 189#
46	152 821 872	GRAND TOTAL	154 789 858	1 967 986

- Denotes Decrease

Verified By

SUPPLEMENTARY STATEMENT
OF
CONTINGENT LIABILITIES NOT INCLUDED IN THE BODY
OF THE BALANCE SHEET STATEMENT

Operating and Insurance Reserves

Liabilities for Loss and Damage and Casualties (personal injuries) in excess of the reserve balances as of December 31, 1959, are estimated to be -

Loss and Damage	$1,907,037
Casualties	1,586,756

Accruals for those classes of liabilities were discontinued in 1939. Since then payments have been charged currently to Operating Expenses, consequently, the Income accounts of each accounting period include a full measure of all such payments, which are deducted from gross revenues along with other costs of Railway Express Agency, Inc., in determining Rail Transportation Revenue payable to carriers parties to the Standard Express Operations Agreement effective October 1, 1959.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(b1) Total book liability at close of year	(b2) Portion held by or for respondent at close of year	Balance at close of year (c)	Net change during year. (Increase in Liab., decrease in red) (d)
	$				$	$
1	x x x	STOCK			x x x	x x x
2	x x x		(b1) Total book liability at close of year	(b2) Portion held by or for respondent at close of year	x x x	x x x
3	99 900	(528) Capital stock (p. 19)	96 500	NONE	96 500	3 400#
4	NONE	(529) Premium on capital stock	NONE	"	NONE	-
5	99 900	Total stock liabilities	96 500	"	96 500	3 400#
6	x x x	LONG-TERM DEBT			x x x	x x x
7	x x x		(b1) Total book liability at close of year	(b2) Portion held by or for respondent at close of year	x x x	x x x
8	28 591 266	(530) Funded debt unmatured (p. 23)	$27 637 053	NONE	27 637 053	954 213#
9	10 715 690	(530½) Equipment Obligations—Automotive Equipment	7 946 077	"	7 946 077	2 769 613#
10	14 877 801	(530½) Equipment Obligations—Refrigerator Cars	12 201 275	"	12 201 275	2 676 526#
11	54 184 757	Total Long-Term Debt	47 784 405	"	47 784 405	6 400 352#
12	x x x	CURRENT LIABILITIES			x x x	x x x
13	-	(531) Loans and notes payable			-	-
14	18 356	(532) Traffic balances payable			183 838	165 482
15	12 761 930	(533) Audited accounts and wages unpaid			10 728 436	2 033 494#
16	5 271 352	(534) Miscellaneous accounts payable			5 214 186	57 176#
17	49 490	(535) Matured interest, dividends, and rents unpaid			28 957	20 533#
18	NONE	(536) Matured funded debt unpaid			NONE	-
19	3 741	(537) Miscellaneous advances payable			6 188	2 447
20	1 751 390	(538) Unpaid money orders, checks, and drafts			1 290 908	460 482#
21	19 661 842	(539) Express privilege liabilities			22 719 415	3 057 573
22	2 572 707	(540) Estimated tax liability			2 922 595	349 888
23	158 766	(541) Unmatured interest, dividends, and rents payable			404 580	245 814
24	1 425 772	(542) Other current liabilities			1 282 755	143 017#
25	43 675 356	Total current liabilities			44 781 858	1 106 502
26	x x x	DEFERRED LIABILITIES			x x x	x x x
27	NONE	(543) Liability on account of provident funds			NONE	-
28	"	(544) Liability on account of fidelity and indemnity funds			"	-
29	1 897	(545) Other deferred liabilities			"	1 897#
30	1 897	Total deferred liabilities			"	1 897#
31	x x x	UNADJUSTED CREDITS			x x x	x x x
32	NONE	(546) Premium on funded debt			NONE	-
33	8 789 131	(547) Operating and insurance reserves			8 789 131	-
34	45 943 509	(548) Accrued depreciation—Buildings and equipment (p. 27A)			53 195 868	7 252 359
35	9 668	(550) Accrued depreciation—Miscellaneous physical property			10 814	1 146
36	117 654	(551) Other unadjusted credits			131 282	13 628
37	54 859 962	Total unadjusted credits			62 127 095	7 267 133
38	x x x	CORPORATE SURPLUS			x x x	x x x
39	NONE	(552) Additions to property through income and surplus			NONE	-
40	"	(553) Reserves from income and surplus			"	-
41	"	Total appropriated surplus			"	-
42	"	(554) Profit and loss balance (p. 30)			"	-
43	"	Total corporate surplus			"	-
44	152 821 872	GRAND TOTAL			154 789 858	1 967 986

NOTE.—Provision has not been made for Federal income taxes which may be payable in future years as a result of deductions during the period December 31, 1949 to close of the year of this report for accelerated amortization in excess of recorded depreciation. The amounts by which Federal income taxes have been reduced during the indicated period aggregated $ NONE

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- Denotes Decrease

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 33)	358 463 207	x x x	x x x
3	(314) Express privileges—Dr. (p. 35)	125 044 089	x x x	x x x
4	Revenue from transportation	x x x	243 419 118	x x x
5	(302) Revenue from operations other than transportation (p. 33)	x x x	4 555 609	x x x
6	Total operating revenues (p. 33)	x x x	247 984 727	x x x
7	(315) Operating expenses (p. 49)	x x x	228 798 485	x x x
8	Net operating revenue*	x x x	19 185 242	x x x
9	(316) Uncollectible revenue from transportation	x x x	54 133	x x x
10	(317) Express taxes (p. 53)	x x x	20 325 449	x x x
11	Operating income*	x x x	x x x	(1 193 340)
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	3 808	x x x
14	(304) Miscellaneous rent income	x x x	1 420	x x x
15	(305) Net income from miscellaneous physical property (p. 25)	x x x	857	x x x
16	(306) Separately operated properties—Profit (p. 33)	x x x	5 140	x x x
17	(307) Dividend income (p. 43)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 43)	x x x	3 780	x x x
19	(309) Income from unfunded securities and accounts	x x x	1 439	x x x
20	(310) Income from sinking and other reserve funds	x x x	1 962	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 51)	x x x	3 299 324	x x x
24	Total other income	x x x	3 317 730	x x x
25	Gross income*	x x x	x x x	2 124 390
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	16 863	x x x
29	(320) Miscellaneous taxes	x x x	1 392	x x x
30	(321) Net loss on miscellaneous physical property (p. 25)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 33)	x x x	"	x x x
32	(323) Interest on funded debt (p. 23)	x x x	2 162 426	x x x
33	(324) Interest on unfunded debt	x x x	2 317	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	1 085	x x x
37	Total deductions from gross income	x x x	2 184 083	x x x
38	Net income*	x x x	x x x	(59 693)
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 31)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	(59 693)

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of $ NONE

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INCOME ACCOUNTS

Line No.	Item (a)	(b)	(c)	(d)
1	CREDITS			
2	I. GROSS OPERATING REVENUES			
3	(301) Charges for transportation (p.33)	$368 463 207		
4	(302) Revenue from operations other than transportation (p.33)	4 565 609		
5	Total gross operating revenues		$373 028 816	
6	II. OTHER INCOME			
7	(303) Rent from real property and equipment used jointly	3 808		
8	(304) Miscellaneous rent income	1 420		
9	(305) Net income from miscellaneous physical property (p.25)	857		
10	(306) Separately operated properties - Profit (p.33)	5 140		
11	(307) Dividend income (p.43)	-		
12	(308) Income from funded securities (p.43)	3 780		
13	(309) Income from unfunded securities and accounts	1 439		
14	(310) Income from sinking and other reserve funds	1 962		
15	(311) Release of premiums on funded debt	-		
16	(312) Contributions from other companies	-		
17	(313) Miscellaneous income (p.51)	3 299 324		
18	Total other income		3 317 730	
19	Total gross operating revenues and other income		376 345 546	
20	III. PROFIT AND LOSS CREDITS			
21	(403) Profit on real property and equipment sold	158 360		
22	(404) Delayed income credits	-		
23	(405) Unrefundable overcharges	3 862		
24	(406) Miscellaneous profit and loss credits	30 169		
25	Total profit and loss credits		192 391	
26	TOTAL CREDITS			$376 538 937
27	DEBITS			
28	IV. OPERATING EXPENSES, UNCOLLECTIBLE REVENUE FROM TRANSPORTATION, AND EXPRESS TAXES			
29	(315) Operating expenses (p.49)	228 798 485		
30	(316) Uncollectible revenue from transportation	54 133		
31	(317) Express Taxes (p.53)	20 325 449		
32	Total operating expenses, uncollectible revenue from transportation, and express taxes		249 178 067	
33	V. OTHER DEDUCTIONS			
34	(318) Rent for real property and equipment used jointly	-		
35	(319) Miscellaneous rents	16 863		
36	(320) Miscellaneous taxes	1 392		
37	(321) Net loss on miscellaneous physical property (p.25)	-		
38	(322) Separately operated properties - Loss (p.33)	-		
39	(323) Interest on funded debt (p.23)	2 162 426		
40	(324) Interest on unfunded debt	2 317		
41	(325) Amortization of discount on funded debt	-		
42	(326) Income transferred to other companies	-		
43	(327) Miscellaneous income debits	1 085		
44	Total other deductions		2 184 06.	
45	VI. PROFIT AND LOSS DEBITS			
46	(415) Loss on land sold	-		
47	(416) Delayed income debits	-		
48	(417) Miscellaneous profit and loss debits	13 983		
49	Total Profit and Loss Debits		13 983	
50	VII. PAYMENTS TO RAIL AND OTHER CARRIERS FOR HAULING EXPRESS			
51	(314) Payments to Rail and other Carriers for hauling express (p.35)		125 044 089	
52	Net Income	158 360		
53	Less provision for Federal Income Taxes (included in Account 317)	39 645		
54	Net Income after provision for Federal Income Taxes		118 715	
55	TOTAL DEBITS			$376 538 937

NOTE: Net income accrues to Railway Express Agency, Incorporated, solely from the sale of Real Property and Equipment. No dividends are paid or payable on the capital stock of the Agency.

The capital stock of Railway Express Agency, Incorporated, is owned by 64 Class I railroads. There are in effect between the Agency and each of approximately 149 carriers, including 64 stockholding railroads, agreements in standard form for the conduct of express operations over its lines.

These agreements provide that there shall be ascertained the income, viz.:

1. Charges for transportation
2. Revenue from operations other than transportation
3. Other income credits
4. Profit and loss credits, excluding profit on real property and equipment sold,

and from the total thereof shall be deducted:

1. Operating expenses
2. Taxes, excluding Provision for Federal Income Taxes
3. Other deductions from income including compensation to carriers not parties to the standard form of agreement
4. Profit and loss debits;

and that remainder shall be apportioned among and paid to the carriers, parties to the standard form of agreement, according to volume of express business handled on the respective lines as measured by gross express revenues. These payments, as well as those made to carriers not parties to the standard form of agreement, are classified as "Payments to Rail and Other Carriers for Hauling Express."

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 29) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 31.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x x x x	NONE	
2	(402) Credit balance transferred from income	x x x x x x	"	
3	(403) Profit on real property and equipment sold	x x x x x x	158 360	
4	(404) Delayed income credits*	x x x x x x	NONE	
5	(405) Unrefundable overcharges	x x x x x x	3 862	
6	(406) Miscellaneous profit and loss credits*	x x x x x x	30 169	
7	(407) Debit balance at beginning of year	NONE	x x x x x x	
8	(408) Debit balance transferred from income	59 693	x x x x x x	
9	(409) Surplus applied to sinking and other reserve funds	NONE	x x x x x x	
10	(410) Dividend appropriations of surplus (p. 31)	"	x x x x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x x x x	
12	(412) Stock discount extinguished through surplus	"	x x x x x x	
13	(413) Debt discount extinguished through surplus	"	x x x x x x	
14	(414) Miscellaneous appropriations of surplus	"	x x x x x x	
15	(415) Loss on land sold	"	x x x x x x	
16	(416) Delayed income debits*	"	x x x x x x	
17	(417) Miscellaneous profit and loss debits*	13 983	x x x x x x	
18	† Credit balance carried to Balance Sheet	118 715		
19	TOTAL	192 391	192 391	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Unpaid C.O.D. Drafts	$12,432
Unpaid Claim Drafts	7,702
Unpaid Payroll Drafts	3,658
Unpaid Expenditure Drafts	5,755
Miscellaneous	621
Total	$30,169

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fines imposed by U.S. Government	$ 2,708
Loss sustained from Havana, Cuba Operation	7,665
Drafts credited to Profit and Loss in prior years, paid during current year:	
C.O.D. Drafts	1,031
Claim Drafts	1,515
Payroll Drafts	636
Expenditure Drafts	172
Miscellaneous	256
Total	$1,983

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)	Remarks (c)
1	I. TRANSPORTATION	$	
2	(101) Express, domestic	365 680 747	
3	(102) Express, foreign	671 521	
4	(103) Miscellaneous	2 110 939	
5	Total transportation	368 463 207	
6	II. CONTRACT PAYMENTS		
7	(104) Express privileges—Dr	125 044 089	
8	Revenue from transportation	243 419 118	
9	III. OPERATIONS OTHER THAN TRANSPORTATION		
10	(105) Customs brokerage fees	1 013 184	
11	(106) Order and commission	20 880	
12	(107) Rents of buildings and other property	211 036	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	1 504 097	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	"	
21	(116) Miscellaneous	1 814 112	
22	Total other than transportation	4 355 609	
23	Total operating revenues	247 984 727	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c)	Loss (d)
41			$	$
42	Railway Express Motor Transport, Incorporated	219 East 42nd St., New York, N.Y.	3 353	
43				
44	Railway Express Agency, Incorporated, of California			
45		219 East 42nd St., New York, N.Y.	1 787	
46				
47				
48				
49				
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58				
59				
60				
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64				
65				
66				
67				
68				
69				
70				
71				
72		NET TOTAL	5 140	

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COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase shown in black, decrease in red) (d)
	$		$	$
1	xxx	INVESTMENT	xxx	xxx
2	xxx	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	xxx	xxx
3	98 416 799	(501) Real property and equipment (p. 27) — $102 380 257 / NONE	102 380 257	3 963 458
4	NONE	(502) Sinking funds (p. 45) — NONE / NONE	NONE	-
5	50 321	(503) Miscellaneous physical property (p. 25)	43 921	6 400 #
6	xxx	(504) Investments in affiliated companies—	xxx	xxx
7	48 500	(A) Stocks (pp. 36 and 41)	48 500	-
8	NONE	(B) Bonds (pp. 38 and 42)	NONE	-
9	"	(C) Notes	200 000	200 000
10	"	(D) Advances	NONE	-
11	xxx	(505) Other investments—	xxx	xxx
12	NONE	(A) Stocks (pp. 37 and 41)	NONE	-
13	1 000	(B) Bonds (pp. 39 and 42)	1 000	-
14	NONE	(C) Notes	NONE	-
15	"	(D) Advances	"	-
16	98 515 520	Total investment	102 673 578	4 157 058
17	xxx	CURRENT ASSETS	xxx	xxx
18	32 465 564	(506) Cash	24 345 921	8 119 643 #
19	2 095	(507) Special deposits	2 123	28
20	886	(508) Loans and notes receivable	3 000 268	2 999 382
21	252 494	(509) Traffic balances receivable	24 520	227 974 #
22	14 693 472	(510) Net balances receivable from agents and messengers	14 978 737	285 265
23	4 011 465	(511) Miscellaneous accounts receivable	4 214 177	202 732
24	699 655	(512) Material and supplies	2 295 174	1 595 519
25	100	(513) Interest, dividends, and rents receivable	3 850	3 750
26	975	(514) Working fund advances	990	15
27	1 512 143	(515) Other current assets	1 203 665	308 478 #
28	53 638 829	Total current assets	50 069 425	3 569 404 #
29	xxx	DEFERRED ASSETS	xxx	xxx
30	xxx	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	xxx	xxx
31	75 382	(516) Insurance and other reserve funds (p. 45) — $75 307 / NONE	75 307	75 #
32	NONE	(517) Provident funds (p. 45) — NONE / "	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 45) — " / "	"	-
34	"	(519) Advance payments on contracts	"	-
35	31 870	(520) Other deferred assets	25 987	5 883 #
36	107 252	Total deferred assets	101 294	5 958 #
37	xxx	UNADJUSTED DEBITS	xxx	xxx
38	145 667	(521) Rents and insurance premiums paid in advance	149 865	4 198
39	558 644	(522) Taxes paid in advance	674 239	115 595
40	NONE	(523) Discount on capital stock	NONE	-
41	"	(524) Discount on funded debt	"	-
42	1 822 845	(525) Other unadjusted debits — Par value of holding at close of year	3 075 835	1 252 989
43	xxx	(526) Securities issued or assumed—Unpledged (pp. 19 and 23) — NONE	xxx	xxx
44	xxx	(527) Securities issued or assumed—Pledged (pp. 19 and 23) — "	xxx	xxx
45	2 527 157	Total unadjusted debits	3 899 939	1 372 782
46	154 789 858	GRAND TOTAL	155 744 335	1 954 478

- Denotes Decrease

1960

SUPPLEMENTARY STATEMENT
OF
CONTINGENT LIABILITIES NOT INCLUDED IN THE BODY
OF THE BALANCE SHEET STATEMENT

Operating and Insurance Reserves

Liabilities for Loss and Damage and Casualties (personal injuries) in excess of the reserve balances as of December 31, 1960, are estimated to be -

Loss and Damage	$1,791,263
Casualties	$1,665,966

Accruals for those classes of liabilities were discontinued in 1939. Since then payments have been charged currently to Operating Expenses, consequently, the Income accounts of each accounting period include a full measure of all such payments, which are deducted from gross revenues along with other costs of Railway Express Agency, Inc., in determining Rail Transportation Revenue payable to carriers parties to the Standard Express Operations Agreement effective October 1, 1959.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(b1) Total book liability at close of year	(b2) Portion held by or for respondent at close of year	Balance at close of year (c)	Net credits during year (Increase in credit balance during year shown in brackets) (d)
1	$				$	$
2		STOCK				
3	95 500	(528) Capital stock (p. 19)	95 500	NONE	95 500	-
4	NONE	(529) Premium on capital stock	NONE	"	NONE	-
5	95 500	Total stock liabilities	95 500	"	95 500	-
6		LONG-TERM DEBT				
7			(b1) Total book liability at close of year	(b2) Portion held by or for respondent at close of year		
8	27 637 053	(530) Funded debt unmatured (p. 23)	$27 637 053	NONE	27 637 053	-
9	7 946 077	(530½) Equipment Obligations—Automotive Equipment	11 240 398	"	11 240 398	3 294 321
10	12 201 275	Equipment Obligations—Refrigerator Cars	10 119 461	"	10 119 461	2 081 814
11	47 784 405	Total Long-Term Debt	48 996 912	"	48 996 912	1 212 507
12		CURRENT LIABILITIES				
13	-	(531) Loans and notes payable			-	-
14	183 838	(532) Traffic balances payable			108 248	75 590
15	10 728 486	(533) Audited accounts and wages unpaid			12 728 090	1 999 604
16	5 214 186	(534) Miscellaneous accounts payable			5 255 405	41 219
17	28 957	(535) Matured interest, dividends, and rents unpaid			10 909	18 048
18	NONE	(536) Matured funded debt unpaid			NONE	-
19	6 188	(537) Miscellaneous advances payable			6 038	150
20	1 290 908	(538) Unpaid money orders, checks, and drafts			1 440 217	149 309
21	22 719 415	(539) Express privilege liabilities			12 148 282	10 571 133
22	2 922 595	(540) Estimated tax liability			3 030 825	108 230
23	404 580	(541) Unmatured interest, dividends, and rents payable			437 834	33 254
24	1 282 755	(542) Other current liabilities			1 559 437	276 682
25	44 781 858	Total current liabilities			36 725 285	8 056 573
26		DEFERRED LIABILITIES				
27	NONE	(543) Liability on account of provident funds			NONE	-
28	"	(544) Liability on account of fidelity and indemnity funds			"	-
29	"	(545) Other deferred liabilities			5 025	5 025
30	"	Total deferred liabilities			5 025	5 025
31		UNADJUSTED CREDITS				
32	NONE	(546) Premium on funded debt			NONE	-
33	8 789 131	(547) Operating and insurance reserves			8 789 131	-
34	53 195 868	(548) Accrued depreciation—Buildings and equipment (p. 27A)			61 978 425	8 782 557
35	10 814	(550) Accrued depreciation—Miscellaneous physical property			11 320	506
36	131 282	(551) Other unadjusted credits			23 023	108 259
37	52 127 095	Total unadjusted credits			70 801 899	8 674 804
38		CORPORATE SURPLUS				
39	NONE	(552) Additions to property through income and surplus			NONE	-
40	"	(553) Reserves from income and surplus			"	-
41	"	Total appropriated surplus			"	-
42	"	(554) Profit and loss balance (p. 30)			118 715	118 715
43	"	Total corporate surplus			118 715	118 715
44	154 789 858	GRAND TOTAL			156 744 335	1 954 478

NOTE.—Provision has not been made for Federal income taxes which may be payable in future years as a result of deductions during the period December 31, 1949 to close of the year of this report for accelerated amortization in excess of recorded depreciation. The amounts by which Federal income taxes have been reduced during the indicated period aggregated $ NONE

- Denotes Decrease

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 33)	368 849 444	x x x	x x x
3	(314) Express privileges—Dr. (p. 35)	116 417 924	x x x	x x x
4	Revenue from transportation	x x x	252 431 520	x x x
5	(302) Revenue from operations other than transportation (p. 33)	x x x	4 354 887	x x x
6	Total operating revenues (p. 33)	x x x	256 786 407	x x x
7	(315) Operating expenses (p. 49)	x x x	231 858 699	x x x
8	Net operating revenue*	x x x	24 927 708	x x x
9	(316) Uncollectible revenue from transportation	x x x	74 810	x x x
10	(317) Express taxes (p. 53)	x x x	23 594 944	x x x
11	Operating income*	x x x	x x x	1 157 954
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	2 337	x x x
14	(304) Miscellaneous rent income	x x x	875	x x x
15	(305) Net income from miscellaneous physical property (p. 25)	x x x	2 962	x x x
16	(306) Separately operated properties—Profit (p. 33)	x x x	6 072	x x x
17	(307) Dividend income (p. 43)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 43)	x x x	8 687	x x x
19	(309) Income from unfunded securities and accounts	x x x	138 919	x x x
20	(310) Income from sinking and other reserve funds	x x x	1 970	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 51)	x x x	3 506 252	x x x
24	Total other income	x x x	3 668 074	x x x
25	Gross income*	x x x	x x x	4 826 028
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	46 637	x x x
29	(320) Miscellaneous taxes	x x x	1 196	x x x
30	(321) Net loss on miscellaneous physical property (p. 25)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 33)	x x x	"	x x x
32	(323) Interest on funded debt (p. 23)	x x x	2 305 486	x x x
33	(324) Interest on unfunded debt	x x x	8 334	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	10 825	x x x
37	Total deductions from gross income	x x x	2 372 473	x x x
38	Net income*	x x x	x x x	2 453 550
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 31)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	2 453 550

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of $ None

Under the accounting procedures prescribed in the Standard Express Operations Agreement with railroads as summarized on Page 58 of Form H for the year 1959, the Express Company could have net income during the first six months of 1961 only to the extent of profits from the sale of property. Effective July 1, 1961 (instead of distributing among the railroads all revenues remaining after the deduction of all other costs as was done prior thereto), the Express Company became obligated under the Agreement to pay the railroads agreed rates for units of service measured by assigned car space for express plus 50% of any revenues remaining, thus placing the Express Company in a position to have net income equal to 50% of the revenues remaining after the initial payment to the railroads calculated at car foot mile base rates. Accordingly, during the last half of 1961 the Express Company had net income from operations in addition to profits from the sales of property.

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 29) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 31.

Line No.	Item (a)	Debits (b)			Credits (c)			Remarks (d)
		$			$			
1	(401) Credit balance at beginning of year	x x x	x x	x x		118	715	
2	(402) Credit balance transferred from income	x x x	x x	x x	2	453	550	
3	(403) Profit on real property and equipment sold	x x x	x x	x x		222	513	✓
4	(404) Delayed income credits*	x x x	x x	x x		NONE		
5	(405) Unrefundable overcharges	x x x	x x	x x		3	034	
6	(406) Miscellaneous profit and loss credits*	x x x	x x	x x		32	887	
7	(407) Debit balance at beginning of year		NONE		x x x	x x	x x	
8	(408) Debit balance transferred from income		"		x x x	x x	x x	
9	(409) Surplus applied to sinking and other reserve funds		"		x x x	x x	x x	
10	(410) Dividend appropriations of surplus (p. 31)		"		x x x	x x	x x	
11	(411) Surplus set aside for investment in physical property		"		x x x	x x	x x	
12	(412) Stock discount extinguished through surplus		"		x x x	x x	x x	
13	(413) Debt discount extinguished through surplus		"		x x x	x x	x x	
14	(414) Miscellaneous appropriations of surplus		"		x x x	x x	x x	
15	(415) Loss on land sold		"		x x x	x x	x x	
16	(416) Delayed income debits*		"		x x x	x x	x x	
17	(417) Miscellaneous profit and loss debits*		24	063	x x x	x x	x x	
18	† Credit balance carried to Balance Sheet	2	806	536				
19	TOTAL	2	830	699	2	830	699	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Unpaid C.O.D. Drafts	$ 8 554
Unpaid Claim Drafts	8 823
Unpaid Payroll Drafts	11 935
Unpaid Expenditure Drafts	2 920
Miscellaneous	555
Total	$32 887

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fines imposed by U. S. Government	$ 2 961
Drafts credited to Profit and Loss in prior years, paid during current year:	
C.O.D. Drafts	695
Claim Drafts	1 818
Payroll Drafts	1 179
Expenditure Drafts	3 326
Miscellaneous	14 085
Total	$24 063

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)			Remarks (c)
		$			
1	I. TRANSPORTATION	x x x	x x	x x	
2	(101) Express, domestic	366	995	359	
3	(102) Express, foreign		641	166	
4	(103) Miscellaneous	1	212	919	
5	Total transportation	368	849	444	
6	II. CONTRACT PAYMENTS	x x x	x x	x x	
7	(104) Express privileges—Dr	116	417	924	
8	Revenue from transportation	252	431	520	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	x x	x x	
10	(105) Customs brokerage fees	1	051	089	
11	(106) Order and commission		12	507	
12	(107) Rents of buildings and other property		151	820	
13	(108) Money orders		NONE		
14	(109) C. O. D. checks	1	398	991	
15	(110) Limited and unlimited cheques		NONE		
16	(111) Travelers cheques		"		
17	(112) Telegraph and cable transfers		"		
18	(113) Letters of credit		"		
19	(114) Foreign postal remittances		"		
20	(115) Profit on exchange and other financial revenue		"		
21	(116) Miscellaneous	1	740	480	
22	Total other than transportation	4	354	887	
23	Total operating revenues	256	786	407	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c)			Loss (d)		
			$			$		
41	Railway Express Motor Transport,							
42	Incorporated	219 East 42nd St., New York, N.Y.		4	318			
43								
44	Railway Express Agency, Incorpo-							
45	rated, of California	219 East 42nd St., New York, N.Y.		1	754			
46								
47								
48								
49								
50								
51								
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56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								
71		NET TOTAL		5	072			
72								

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Item (b)	(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b1)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
				$	$	$
1	INVESTMENT			xxx	xxx	xxx
2				xxx	xxx	xxx
3	(501) Real property and equipment (p. 27)	$111 007 843	NONE	102 380 257	111 007 843	8 627 586
4	(502) Sinking funds (p. 45)	NONE	NONE	NONE	NONE	-
5	(503) Miscellaneous physical property (p. 25)			43 921	33 615	10 306#
6	(504) Investments in affiliated companies—			xxx	xxx	xxx
7	(A) Stocks (pp. 36 and 41)			48 500	248 500	200 000
8	(B) Bonds (pp. 38 and 42)			NONE	NONE	-
9	(C) Notes			200 000	183 500	16 500#
10	(D) Advances			NONE	NONE	-
11	(505) Other investments—			xxx	xxx	xxx
12	(A) Stocks (pp. 37 and 41)			NONE	NONE	-
13	(B) Bonds (pp. 39 and 42)			1 000	1 000	-
14	(C) Notes			NONE	NONE	-
15	(D) Advances			"	"	-
16	Total investment			102 673 678	111 474 458	8 800 780
17	CURRENT ASSETS			xxx	xxx	xxx
18	(506) Cash (See Note 1)			24 345 921	23 120 979	1 224 942#
19	(507) Special deposits			2 123	4 197	2 074
20	(508) Loans and notes receivable			3 000 268	14 977 281	11 977 013
21	(509) Traffic balances receivable			24 520	262 814	238 294
22	(510) Net balances receivable from agents and messengers			14 978 737	16 352 319	1 373 582
23	(511) Miscellaneous accounts receivable			4 214 177	5 903 088	1 688 911
24	(512) Material and supplies			2 295 174	727 767	1 567 407#
25	(513) Interest, dividends, and rents receivable			3 850	3 584	266#
26	(514) Working fund advances			990	1 015	25
27	(515) Other current assets			1 203 665	912 998	290 667#
28	Total current assets			50 069 425	62 266 042	12 196 617
29	DEFERRED ASSETS			xxx	xxx	xxx
30		(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b1)	xxx	xxx	xxx
31	(516) Insurance and other reserve funds (p. 45)	280 254	NONE	75 307	80 254	4 947
32	(517) Provident funds (p. 45)	NONE	"	NONE	NONE	-
33	(518) Fidelity and indemnity funds (p. 45)	"	"	"	"	-
34	(519) Advance payments on contracts				"	-
35	(520) Other deferred assets			25 987	16 428	9 559#
36	Total deferred assets			101 294	96 582	4 612#
37	UNADJUSTED DEBITS			xxx	xxx	xxx
38	(521) Rents and insurance premiums paid in advance			149 865	136 631	13 234#
39	(522) Taxes paid in advance			674 239	525 125	149 114#
40	(523) Discount on capital stock			NONE	NONE	-
41	(524) Discount on funded debt			"	"	-
42	(525) Other unadjusted debits		Par value of holding at close of year	3 075 835	328 195	2 747 640#
43	(526) Securities issued or assumed—Unpledged (pp. 19 and 23)		NONE	xxx	xxx	xxx
44	(527) Securities issued or assumed—Pledged (pp. 19 and 23)		"	xxx	xxx	xxx
45	Total unadjusted debits			3 899 939	989 951	2 909 988#
46	GRAND TOTAL			156 744 335	174 827 133	18 082 797

- Denotes Decrease

NOTE 1: At December 31, 1961, there were outstanding $9,202,967 of checks, vouchers and drafts issued prior to December 31, 1961. This total is included in Current Liabilities and Cash with Treasurer.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year. (Increase in black, decrease in red) (d)
	$		$	$
1	x x x	STOCK	x x x	x x x
2	x x x	(b1) Total book liability at close of year / (b2) Portion held by or for respondent at close of year	x x x	x x x
3	95 500	(528) Capital stock (p. 19) — 95 300 / NONE	95 300	200#
4	NONE	(529) Premium on capital stock — NONE / "	NONE	-
5	95 500	Total stock liabilities — 95 300 / "	95 300	200#
6	x x x	LONG-TERM DEBT	x x x	x x x
7	x x x	(b1) Total book liability at close of year / (b2) Portion held by or for respondent at close of year	x x x	x x x
8	27 637 053	(530) Funded debt unmatured (p. 23) — $27 637 053 / NONE	27 637 053	-
9	11 240 398	(530½) Equipment Obligations—Automotive Equipment — * 10 782 478 / "	10 782 478	457 920#
10	10 119 451	Equipment Obligations—Refrigerator Cars — * 9 273 984 / "	9 273 984	845 477#
11	48 996 912	Total Long-Term Debt — 47 693 515 / "	47 693 515	1 303 397#
12	x x x	CURRENT LIABILITIES	x x x	x x x
13	-	(531) Loans and notes payable	-	-
14	108 248	(532) Traffic balances payable	92 035	16 213#
15	12 728 090	(533) Audited accounts and wages unpaid (See Note 1, Page 54)	15 265 263	2 537 173
16	5 255 405	(534) Miscellaneous accounts payable	5 194 625	60 780#
17	10 909	(535) Matured interest, dividends, and rents unpaid	12 642	1 733
18	NONE	(536) Matured funded debt unpaid	NONE	-
19	6 038	(537) Miscellaneous advances payable	6 038	-
20	1 440 217	(538) Unpaid money orders, checks, and drafts	1 372 626	67 591#
21	12 148 282	(539) Express privilege liabilities	17 060 744	4 912 462
22	3 030 825	(540) Estimated tax liability	5 738 772	2 707 947
23	437 834	(541) Unmatured interest, dividends, and rents payable	441 318	3 484
24	ø 7 868 365	(542) Other current liabilities	9 503 259	1 634 894
25	43 034 213	Total current liabilities	54 687 322	11 653 109
26	x x x	DEFERRED LIABILITIES	x x x	x x x
27	NONE	($43) Liability on account of provident funds	NONE	-
28	"	(544) Liability on account of fidelity and indemnity funds	"	-
29	5 025	(545) Other deferred liabilities	51 842	46 817
30	5 025	Total deferred liabilities	51 842	46 817
31	x x x	UNADJUSTED CREDITS	x x x	x x x
32	NONE	(546) Premium on funded debt	NONE	-
33	2 480 203	(547) Operating and insurance reserves (See Note 2)	2 434 300	45 903#
34	61 978 425	(548) Accrued depreciation—Buildings and equipment (p. 27A)	67 038 445	5 060 020
35	11 320	(550) Accrued depreciation—Miscellaneous physical property	10 515	805#
36	23 023	(551) Other unadjusted credits	8 258	14 765#
37	64 492 971	Total unadjusted credits	69 491 518	4 998 547
38	x x x	CORPORATE SURPLUS	x x x	x x x
39	NONE	(552) Additions to property through income and surplus	NONE	-
40	"	(553) Reserves from income and surplus	"	-
41	"	Total appropriated surplus	"	-
43	118 715	(554) Profit and loss balance (p. 30)	2 806 536	2 687 921
43	118 715	Total corporate surplus	2 806 536	2 687 921
44	156 744 336	GRAND TOTAL	174 827 133	18 082 797

NOTE.—Provision has not been made for Federal income taxes which may be payable in future years as a result of deductions during the period December 31, 1949 to close of the year of this report for accelerated amortization in excess of recorded depreciation. The amounts by which Federal income taxes have been reduced during the indicated period aggregated $ NONE

- Denotes Decrease

* - Equipment Obligations of $20,055,451 include installments of $3,718,959 due to be paid during the calendar year 1962.

NOTE 2: Operating and Insurance Reserve include $2,281,201 which it is expected will be paid during the calendar year 1962.

ø - Restated to 1961 Classification.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. OPERATING INCOME	x x x	x x x	x x x
2	(301) Charges for transportation (p. 33)	383 707 017	x x x	x x x
3	(314) Express privileges—Dr. (p. 35)	116 901 310	x x x	x x x
4	Revenue from transportation	x x x	266 805 707	x x x
5	(302) Revenue from operations other than transportation (p. 33)	x x x	4 165 585	x x x
6	Total operating revenues (p. 33)	x x x	270 971 292	x x x
7	(315) Operating expenses (p. 49)	x x x	243 071 840	x x x
8	Net operating revenue*	x x x	27 899 452	x x x
9	(316) Uncollectible revenue from transportation	x x x	5 115	x x x
10	(317) Express taxes (p. 53)	x x x	22 969 588	x x x
11	Operating income*	x x x	x x x	4 875 749
12	II. OTHER INCOME	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	1 406	x x x
14	(304) Miscellaneous rent income	x x x	—	x x x
15	(305) Net income from miscellaneous physical property (p. 25)	x x x	3 508	x x x
16	(306) Separately operated properties—Profit (p. 33)	x x x	5 894	x x x
17	(307) Dividend income (p. 43)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 43)	x x x	7 142	x x x
19	(309) Income from unfunded securities and accounts	x x x	600 453	x x x
20	(310) Income from sinking and other reserve funds	x x x	2 186	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 51)	x x x	3 686 812	x x x
24	Total other income	x x x	4 307 401	x x x
25	Gross income*	x x x	x x x	9 183 150
26	III. DEDUCTIONS FROM GROSS INCOME	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	85 004	x x x
29	(320) Miscellaneous taxes	x x x	925	x x x
30	(321) Net loss on miscellaneous physical property (p. 25)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 33)	x x x	"	x x x
32	(323) Interest on funded debt (p. 23)	x x x	2 718 443	x x x
33	(324) Interest on unfunded debt	x x x	1 922	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	85 834	x x x
37	Total deductions from gross income	x x x	2 892 128	x x x
38	Net income*	x x x	x x x	6 291 022
39	IV. DISPOSITION OF NET INCOME	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 31)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	6 291 022

*If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of $ See below:

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit: $402,268.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation, $2,789,523.

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 29) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 31.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x	2 806 636	
2	(402) Credit balance transferred from income	x x x	6 291 022	
3	(403) Profit on real property and equipment sold	x x x	1 242 303	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unrefundable overcharges	x x x	1 950	
6	(406) Miscellaneous profit and loss credits*	x x x	114 830	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	"	x x x	
9	(409) Surplus applied to sinking and other reserve funds	"	x x x	
10	(410) Dividend appropriations of surplus (p. 31)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	3 191 791	x x x	
15	(415) Loss on land sold	37 007	x x x	
16	(416) Delayed income debits*	NONE	x x x	
17	(417) Miscellaneous profit and loss debits*	93 065	x x x	
18	† Credit balance carried to Balance Sheet	7 134 878		
19	TOTAL	10 456 741	10 456 741	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Prepayment of Equipment Obligations	$33 205
Profit from Purchase of two U. S. Treasury Notes at Discount	16 562
Deferred Investment Credit Reserve	26 352
Drafts Credited to Profit and Loss in current year	28 908
Miscellaneous	9 803
Total	$114 830

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fees for issuing and recording mortgages	$58 775
Fines imposed by U. S. Government	2 718
Drafts credited to Profit and Loss in prior years, paid during current year	17 453
Miscellaneous	14 119
Total	$93 065

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)	Remarks (c)
		$	
1	I. TRANSPORTATION	x x x	
2	(101) Express, domestic	382 555 037	
3	(102) Express, foreign	447 470	
4	(103) Miscellaneous	701 510	
5	Total transportation	383 707 017	
6	II. CONTRACT PAYMENTS	x x x	
7	(104) Express privileges—Dr.	116 901 310	
8	Revenue from transportation	266 805 707	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	
10	(105) Customs brokerage fees	990 066	
11	(106) Order and commission	11 264	
12	(107) Rents of buildings and other property	145 949	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	1 272 281	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	"	
21	(116) Miscellaneous	1 745 025	
22	Total other than transportation	4 155 585	
23	Total operating revenues	270 971 292	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $			Loss (d) $		
41	Railway Express Motor Transport,							
42	Incorporated	219 East 42nd St., New York, N.Y.		4	654			
43								
44	Railway Express Agency, Incorpo-							
45	rated, of California	219 East 42nd St., New York, N.Y.		1	240			
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								
71								
72		NET TOTAL		5	894			

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Item (b)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
		$	$	$
1	INVESTMENT	xxx	xxx	xxx
2		xxx	xxx	xxx
3	(501) Real property and equipment (p. 27) (b1) Total book assets at close of year: $119 731 566; (b2) Respondent's own issues included in (b1): NONE	111 007 843	119 781 666	8 773 823
4	(502) Sinking funds (p. 45) (b1): NONE; (b2): NONE	NONE	NONE	-
5	(503) Miscellaneous physical property (p. 25)	33 615	33 615	-
6	(504) Investments in affiliated companies—	xxx	xxx	xxx
7	(A) Stocks (pp. 36 and 41)	248 500	548 500	300 000
8	(B) Bonds (pp. 38 and 42)	NONE	NONE	-
9	(C) Notes	183 500	257 000	73 500
10	(D) Advances	NONE	NONE	-
11	(505) Other investments—	xxx	xxx	xxx
12	(A) Stocks (pp. 37 and 41)	NONE	NONE	-
13	(B) Bonds (pp. 39 and 42)	1 000	1 000	-
14	(C) Notes	NONE	NONE	-
15	(D) Advances	"	"	-
16	Total investment	111 474 458	120 521 781	9 147 323
17	CURRENT ASSETS	xxx	xxx	xxx
18	(506) Cash (See Note 1)	23 120 979	24 755 470	1 634 491
19	(507) Special deposits	4 197	2 972	1 225#
20	(508) Loans and notes receivable	14 977 281	24 333 910	9 356 629
21	(509) Traffic balances receivable	262 814	217 320	45 494#
22	(510) Net balances receivable from agents and messengers	16 352 319	16 499 503	147 184
23	(511) Miscellaneous accounts receivable	5 903 088	4 987 662	915 426#
24	(512) Material and supplies	727 767	721 641	6 126#
25	(513) Interest, dividends, and rents receivable	3 584	3 114	470#
26	(514) Working fund advances	1 015	1 295	280
27	(515) Other current assets	912 998	2 650 315	1 737 317
28	Total current assets	62 266 042	74 173 202	11 907 160
29	DEFERRED ASSETS	xxx	xxx	xxx
30	(b1) Total book assets at close of year; (b2) Respondent's own issues included in (b1)	xxx	xxx	xxx
31	(516) Insurance and other reserve funds (p. 45) (b1): $80 257; (b2): NONE	80 254	80 257	3
32	(517) Provident funds (p. 45) (b1): NONE; (b2): "	NONE	NONE	-
33	(518) Fidelity and indemnity funds (p. 45) (b1): "; (b2): "	"	"	-
34	(519) Advance payments on contracts	"	"	-
35	(520) Other deferred assets	16 428	66 747	50 319
36	Total deferred assets	96 682	147 004	50 322
37	UNADJUSTED DEBITS	xxx	xxx	xxx
38	(521) Rents and insurance premiums paid in advance	136 631	96 887	39 744#
39	(522) Taxes paid in advance	525 125	624 123	98 998
40	(523) Discount on capital stock	NONE	NONE	-
41	(524) Discount on funded debt	"	"	-
42	(525) Other unadjusted debits	328 195	507 591	179 396
43	(526) Securities issued or assumed—Unpledged (pp. 19 and 23) Par value of holding at close of year: 3 700	xxx	xxx	xxx
44	(527) Securities issued or assumed—Pledged (pp. 19 and 23): NONE	xxx	xxx	xxx
45	Total unadjusted debits	989 951	1 228 601	238 650
46	GRAND TOTAL	174 827 133	196 170 588	21 343 455

- Denotes Decrease

NOTE 1: At December 31, 1952, there were outstanding $9,816,915 of checks, vouchers and drafts issued prior to January 1, 1953. This total is included in Current Liabilities and Cash with Treasurer.

COMPARATIVE BALANCE SHEET--LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
1	$		$	$
2		STOCK		
3	96 300	(528) Capital stock (p. 19) — (b) Total book liability at close of year: 100 000; (b) Portion held by or for respondent at close of year: 3 700	96 300	-
4	NONE	(529) Premium on capital stock — (b) Total book liability at close of year: NONE; (b) Portion held by or for respondent at close of year: NONE	NONE	-
5	96 300	Total stock liabilities — (b) Total book liability at close of year: 100 000; (b) Portion held by or for respondent at close of year: 3 700	96 300	-
6		LONG-TERM DEBT		
7		(b) Total book liability at close of year; (b) Portion held by or for respondent at close of year		
8	47 693 515	(530) Funded debt unmatured (p. 23) — (b) Total book liability at close of year: * 58 638 539; (b) Portion held by or for respondent at close of year: NONE	58 638 539	10 945 024
9		CURRENT LIABILITIES		
10	-	(531) Loans and notes payable	-	-
11	92 035	(532) Traffic balances payable	12 432	79 603 #
12	15 265 263	(533) Audited accounts and wages unpaid	13 891 972	1 373 291 #
13	5 194 625	(534) Miscellaneous accounts payable	5 361 202	166 577
14	12 642	(535) Matured interest, dividends, and rents unpaid	101 493	88 851
15	NONE	(536) Matured funded debt unpaid	NONE	-
16	6 038	(537) Miscellaneous advances payable	3 435	2 603 #
17	1 372 626	(538) Unpaid money orders, checks, and drafts	1 259 200	113 426 #
18	17 060 744	(539) Express privilege liabilities	15 185 594	1 875 150 #
19	5 738 772	(540) Estimated tax liability	4 177 506 ø	1 561 266 #
20	441 318	(541) Unmatured interest, dividends, and rents payable	437 559	3 759 #
21	9 503 259	(542) Other current liabilities	10 946 414	1 443 155
22	54 687 322	Total current liabilities (See Note 1, Page 54)	51 376 807	3 310 515 #
23		DEFERRED LIABILITIES		
24	NONE	(543) Liability on account of provident funds	NONE	-
25	"	(544) Liability on account of fidelity and indemnity funds	"	-
26	51 842	(545) Other deferred liabilities	36 967	14 875 #
27	51 842	Total deferred liabilities	36 967	14 875 #
28		UNADJUSTED CREDITS		
29	NONE	(546) Premium on funded debt	NONE	-
30	2 434 300	(547) Operating and insurance reserves (See Note 2)	2 716 855	282 555
31	67 038 445	(548) Accrued depreciation—Buildings and equipment (p. 27A)	70 556 889	3 518 444
32	10 515	(550) Accrued depreciation—Miscellaneous physical property	11 321	806
33	8 258	(551) Other unadjusted credits	6 952	1 306 #
34	69 491 518	Total unadjusted credits	73 322 017	3 830 499
35		CORPORATE SURPLUS		
36	NONE	(552) Additions to property through income and surplus	NONE	-
37	"	(553) Reserves from income and surplus	5 565 080 ø	5 565 080
38	"	Total appropriated surplus	5 565 080	5 565 080
39	2 806 535	(554) Profit and loss balance (p. 30)	7 134 878 ✓	4 328 242
40	2 806 635	Total corporate surplus	12 699 958	9 893 322
41	174 827 133	GRAND TOTAL	195 170 588	21 343 455

NOTE.—Provision has not been made for Federal income taxes which may be payable in future years as a result of deductions during the period December 31, 1949 to close of the year of this report for accelerated amortization in excess of recorded depreciation. The amounts by which Federal income taxes have been reduced during the indicated period aggregated $ ## .

\# - Denotes Decrease

* - Equipment Obligations aggregating $24,501,485 of which installments of $5,352,949 will be paid during the calendar year 1963, are included in Account Funded Debt unmatured.

NOTE 2: Operating and Insurance Reserves include $2,594,267 which it is expected will be paid during the calendar year 1963.

ø - Includes $2,399,640 transferred from Estimated Tax Liability account for tax benefits for fiscal year ended June 30, 1962, from use of Guideline Depreciation for period July 1, 1961, to December 31, 1961.

- See Page 52.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 29)	383 602 714	x x x	x x x
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	113 215 321	x x x	x x x
4	Revenue from transportation	x x x	270 387 393	x x x
5	(302) Revenue from operations other than transportation (p. 29)	x x x	4 127 224	x x x
6	Total operating revenues (p. 29)	x x x	274 514 617	x x x
7	(315) Operating expenses (p. 40)	x x x	251 562 784	x x x
8	Net operating revenue*	x x x	22 951 833	x x x
9	(316) Uncollectible revenue from transportation	x x x	88 011	x x x
10	(317) Express taxes (p. 43)	x x x	21 668 854	x x x
11	Operating income*	x x x	x x x	1 124 968
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	1 804	x x x
14	(304) Miscellaneous rent income	x x x	16 326	x x x
15	(305) Net income from miscellaneous physical property (p. 23)	x x x	2 984	x x x
16	(306) Separately operated properties—Profit (p. 29)	x x x	5 176	x x x
17	(307) Dividend income (p. 35)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 35)	x x x	16 017	x x x
19	(309) Income from unfunded securities and accounts	x x x	749 375	x x x
20	(310) Income from sinking and other reserve funds	x x x	2 186	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 41)	x x x	3 709 639	x x x
24	Total other income	x x x	4 504 507	x x x
25	Gross income*	x x x	x x x	5 629 475
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	142 929	x x x
29	(320) Miscellaneous taxes	x x x	917	x x x
30	(321) Net loss on miscellaneous physical property (p. 23)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 29)	x x x	"	x x x
32	(323) Interest on funded debt (p. 21)	x x x	3 048 239	x x x
33	(324) Interest on unfunded debt	x x x	2 517	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	76 630	x x x
37	Total deductions from gross income	x x x	3 271 232	x x x
38	Net income*	x x x	x x x	2 428 243
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 28)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x		x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	2 428 243

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ 1 080 247
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . $ 125 005

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 28.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
1	(401) Credit balance at beginning of year	x x x	$ 7 134 878	
2	(402) Credit balance transferred from income	x x x	2 428 243	
3	(403) Profit on real property and equipment sold	x x x	2 049 133	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unredeemable overcharges	x x x	1 576	
6	(406) Miscellaneous profit and loss credits*	x x x	1 336 870	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	"	x x x	
9	(409) Surplus applied to sinking and other reserve funds	"	x x x	
10	(410) Dividend appropriations of surplus (p. 28)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	1 206 252	x x x	
15	(415) Loss on land sold	323 800	x x x	
16	(416) Delayed income debits*	NONE	x x x	
17	(417) Miscellaneous profit and loss debits*	3 820 382	x x x	
18	† Credit balance carried to Balance Sheet	7 600 266		
19	TOTAL	12 950 700	12 950 700	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Correction of depreciation charges accrued in prior years		$1 279 885
Drafts credited to Profit and Loss in current year		39 367
Miscellaneous		17 618
	Total	$1 336 870

MISCELLANEOUS PROFIT AND LOSS DEBITS

Reclassification of Capital Stock		$1 902 888
Establishment of Reserves for overcharge claims and doubtful accounts		400 000
Liability for vacation pay		1 373 126
Losses on sale of Real Property and Equipment		113 050
Fines imposed by U. S. Government		5 394
Drafts credited to Profit and Loss in prior years, paid during current year		7 437
Miscellaneous		18 487
	Total	$3 820 382

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent Regular (b)	Rate Percent Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge Income (e)	Distribution of Charge Profit and loss (f)	Date Declared (g)	Date Payable (h)
31				$	$	$		
32								
33								
34				NONE				
35								
36								
37								
38								
39								
40								
41								
42				TOTAL				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties—Profit" or as "Separately Operated Properties—Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b) $	Remarks (c)
1	I. TRANSPORTATION	x x x 382 460 987	
2	(101) Express, domestic	518 951	
3	(102) Express, foreign	622 756	
4	(103) Miscellaneous	383 602 714	✓
5	Total transportation	x x x 113 215 321	✓
6	II. CONTRACT PAYMENTS		
7	(104) Express privileges—Dr.	270 387 393	
8	Revenue from transportation	x x x x x 933 279	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	7 476	
10	(105) Customs brokerage fees	157 659	
11	(106) Order and commission	NONE	
12	(107) Rents of buildings and other property	1 196 911	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	"	
15	(110) Limited and unlimited cheques	"	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	1 821 899	
21	(116) Miscellaneous	4 127 224	
22	Total other than transportation	274 514 517	
23	Total operating revenues		

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $	Loss (d) $
41	Railway Express Motor Transport, Incorporated	219 East 42nd St., New York, N.Y.	5 087	
42				
43				
44	Railway Express Agency, Incorporated, of California	219 East 42nd St., New York, N.Y.	1 089	
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58		NET TOTAL	6 176	
59				

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$		$	$
1	x x x	INVESTMENT	x x x	x x x
2	x x x	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	x x x	x x x
3	119 781 665	(501) Real property and equipment (p. 25) — $127 925 712 / NONE	127 925 712	8 144 046
4	NONE	(502) Sinking funds (p. 37) — NONE / NONE	NONE	-
5	33 615	(503) Miscellaneous physical property (p. 23)	30 115	3 500#
6	x x x	(504) Investments in affiliated companies—	x x x	x x x
7	548 500	(A) Stocks (pp. 30 and 34)	548 500	-
8	NONE	(B) Bonds (pp. 32 and 35)	NONE	-
9	257 000	(C) Notes	557 000	300 000
10	NONE	(D) Advances	NONE	-
11	x x x	(505) Other investments—	x x x	x x x
12	NONE	(A) Stocks (pp. 31 and 34)	NONE	-
13	1 000	(B) Bonds (pp. 33 and 35)	1 000	-
14	NONE	(C) Notes	NONE	-
15	"	(D) Advances	"	-
16	120 621 781	Total investment	129 062 327	8 440 546
17	x x x	CURRENT ASSETS	x x x	x x x
18	24 755 470	(506) Cash (See Note 1)	24 546 381	209 089#
19	2 972	(507) Special deposits	5 240	2 268
20	24 333 910	(508) Loans and notes receivable	30 018 865	5 684 955
21	217 320	(509) Traffic balances receivable	238 509	21 189
22	16 499 503	(510) Net balances receivable from agents and messengers	18 424 058	1 924 555
23	4 987 662	(511) Miscellaneous accounts receivable	4 482 488	505 174#
24	721 641	(512) Material and supplies	578 572	143 069#
25	3 114	(513) Interest, dividends, and rents receivable	116 338	113 224
26	1 295	(514) Working fund advances	1 800	505
27	2 650 315	(515) Other current assets	851 944	1 798 371#
28	74 173 202	Total current assets	79 264 195	5 090 993
29	x x x	DEFERRED ASSETS	x x x	x x x
30	x x x	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	x x x	x x x
31	80 257	(516) Insurance and other reserve funds (p. 37) — $80 259 / NONE	80 259	2
32	NONE	(517) Provident funds (p. 37) — NONE / "	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 37) — " / "	"	-
34	"	(519) Advance payments on contracts	"	-
35	66 747	(520) Other deferred assets	64 959	1 788#
36	147 004	Total deferred assets	145 218	1 785#
37	x x x	UNADJUSTED DEBITS	x x x	x x x
38	96 887	(521) Rents and insurance premiums paid in advance	90 849	6 038#
39	624 123	(522) Taxes paid in advance	701 913	77 790
40	NONE	(523) Discount on capital stock	NONE	-
41	"	(524) Discount on funded debt	"	-
42	507 591	(525) Other unadjusted debits — Par value of holding at close of year	104 183	403 408#
43	x x x	(526) Securities issued or assumed—Unpledged (pp. 17 and 21) — 76 812	x x x	x x x
44	x x x	(527) Securities issued or assumed—Pledged (pp. 17 and 21) — NONE	x x x	x x x
45	1 228 601	Total unadjusted debits	895 945	331 656#
46	196 179 588	GRAND TOTAL	209 338 685	13 196 097

- Denotes Decrease

NOTE 1: At December 31, 1963, there were outstanding $8,687,254 of checks, vouchers and drafts issued prior to January 1, 1964. This total is included in Current Liabilities and Cash with Treasurer.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year. (Increase in black, decrease in red) (d)
	$		$	$
1	x x x	STOCK	x x x	x x x
2	x x x	(b) Total book liability at close of year / (b) Portion held by or for respondent at close of year	x x x	x x x
3	96 300	(528) Capital stock (p. 17) — 2 075 000 / 75 812	1 999 188	1 902 888
4	NONE	(529) Premium on capital stock — NONE / NONE	NONE	-
5	96 300	Total stock liabilities — 2 075 000 / 75 812	1 999 188	1 902 888
6	x x x	LONG-TERM DEBT	x x x	x x x
7	x x x	(b) Total book liability at close of year / (b) Portion held by or for respondent at close of year	x x x	x x x
8	58 638 539	(530) Funded debt unmatured (p. 21) — * 62 702 024 / NONE	62 702 024	4 063 485
9	x x x	CURRENT LIABILITIES	x x x	x x x
10	-	(531) Loans and notes payable	-	-
11	12 432	(532) Traffic balances payable	16 530	4 098
12	13 891 972	(533) Audited accounts and wages unpaid	14 347 374	455 402
13	5 361 202	(534) Miscellaneous accounts payable	5 458 031	96 829
14	101 493	(535) Matured interest, dividends, and rents unpaid	51 638	49 855#
15	NONE	(536) Matured funded debt unpaid	NONE	-
16	3 435	(537) Miscellaneous advances payable	3 329	106#
17	1 259 200	(538) Unpaid money orders, checks, and drafts	1 175 901	83 299#
18	15 185 594	(539) Express privilege liabilities	12 784 638	2 400 955#
19	4 177 506	(540) Estimated tax liability	4 793 240	615 734
20	437 559	(541) Unmatured interest, dividends, and rents payable	446 888	9 329
21	10 946 414	(542) Other current liabilities	14 000 532	3 054 118
22	51 376 807	Total current liabilities (See Note 1, Page 44)	53 078 101	1 701 294
23	x x x	DEFERRED LIABILITIES	x x x	x x x
24	NONE	(543) Liability on account of provident funds	NONE	-
25	"	(544) Liability on account of fidelity and indemnity funds	"	-
26	36 967	(545) Other deferred liabilities	74 755	37 788
27	36 967	Total deferred liabilities	74 755	37 788
28	x x x	UNADJUSTED CREDITS	x x x	x x x
29	NONE	(546) Premium on funded debt	NONE	-
30	2 716 855	(547) Operating and insurance reserves	3 220 391	503 536
31	70 586 889	(548) Accrued depreciation—Buildings and equipment (p. 25A)	73 965 696	3 378 807
32	11 321	(550) Accrued depreciation—Miscellaneous physical property	11 346	25
33	6 952	(551) Other unadjusted credits	9 325	2 373
34	73 322 017	Total unadjusted credits	77 206 758	3 884 741
35	x x x	CORPORATE SURPLUS	x x x	x x x
36	NONE	(552) Additions to property through income and surplus	NONE	-
37	5 565 080	(553) Reserves from income and surplus	6 707 593	1 142 513
38	5 565 080	Total appropriated surplus	6 707 593	1 142 513
39	7 134 878	(554) Profit and loss balance (p. 28)	7 600 256	465 378
40	12 699 958	Total corporate surplus	14 307 859	1 607 891
41	195 170 588	GRAND TOTAL	209 368 685	13 198 097

NOTE.—Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation ..... $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation.. $ 6 269 410

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of ... compared with the income taxes that would otherwise have been payable without such investment tax credit ..... $ 438 183

- Denotes Decrease

* - Equipment Obligations aggregating $26,596,970 of which installments of $6,351,643 will be paid during the calendar year 1964, are included in Account Funded Debt unmatured.

NOTE 2: Operating and Insurance Reserves include $2,639,826 which it is expected will be paid during the calendar year 1964.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
1	I. Operating Income			
2	(301) Charges for transportation (p. 29)	412 403 254		
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	118 195 599		
4	Revenue from transportation		294 207 555	
5	(302) Revenue from operations other than transportation (p. 29)		4 145 187	
6	Total operating revenues (p. 23)		298 353 842	
7	(315) Operating expenses (p. 40)		274 968 793	
8	Net operating revenue*		23 385 049	
9	(316) Uncollectible revenue from transportation		97 274	
10	(317) Express taxes (p. 43)		23 374 537	
11	Operating income*			(86 762)
12	II. Other Income			
13	(303) Rent from real property and equipment used jointly		2 308	
14	(304) Miscellaneous rent income		89 957	
15	(305) Net income from miscellaneous physical property (p. 23)		2 524	
16	(306) Separately operated properties—Profit (p. 29)		6 222	
17	(307) Dividend income (p. 35)		NONE	
18	(308) Income from funded securities (p. 35)		33 261	
19	(309) Income from unfunded securities and accounts		928 150	
20	(310) Income from sinking and other reserve funds		2 083	
21	(311) Release of premiums on funded debt		NONE	
22	(312) Contributions from other companies		"	
23	(313) Miscellaneous income (p. 41)		4 125 497	
24	Total other income		5 191 022	
25	Gross income*			5 104 260
26	III. Deductions From Gross Income			
27	(318) Rent for real property and equipment used jointly		NONE	
28	(319) Miscellaneous rents		251 567	
29	(320) Miscellaneous taxes		587	
30	(321) Net loss on miscellaneous physical property (p. 23)		NONE	
31	(322) Separately operated properties—Loss (p. 29)		"	
32	(323) Interest on funded debt (p. 21)	3	160 122	
33	(324) Interest on unfunded debt		3 509	
34	(325) Amortization of discount on funded debt		NONE	
35	(326) Income transferred to other companies		"	
36	(327) Miscellaneous income debits		97 322	
37	Total deductions from gross income	3	513 107	
38	Net income*			1 591 153
39	IV. Disposition of Net Income			
40	(328) Income applied to sinking and other reserve funds		NONE	
41	(329) Dividend appropriations of income (p. 28)		"	
42	(330) Income appropriations for investment in physical property		"	
43	(331) Stock discount extinguished through income		"	
44	(332) Miscellaneous appropriations of income		"	
45	Total appropriations		"	
46	Income balance transferred to Profit and Loss*			1 591 153

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ 374 447
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . $ 251 879

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 23.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x	7 600 266	
2	(402) Credit balance transferred from income	x x x	1 591 153	
3	(403) Profit on real property and equipment sold	x x x	452 230	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unrefundable overcharges	x x x	717	
6	(406) Miscellaneous profit and loss credits*	x x x	267 640	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	"	x x x	
9	(409) Surplus applied to sinking and other reserve funds	"	x x x	
10	(410) Dividend appropriations of surplus (p. 23)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	374 447	x x x	
15	(415) Loss on land sold	39	x x x	
16	(416) Delayed income debits*	NONE	x x x	
17	(417) Miscellaneous profit and loss debits*	93 524	x x x	
18	† Credit balance carried to Balance Sheet	9 443 995		
19	TOTAL	9 912 006	9 912 006	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS

Adjustment of Deferred Investment Credit for prior years	$217 265
Drafts credited to Profit and Loss in current year	39 556
Miscellaneous	10 819
Total	$267 640

MISCELLANEOUS PROFIT AND LOSS DEBITS

Losses on sale of Real Property and Equipment	$ 49 927
Fines imposed by U. S. Government	5 959
Drafts credited to Profit and Loss in prior years, paid during current year	15 685
Miscellaneous	21 953
Total	$ 93 524

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent Regular (b)	Rate Percent Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge Income (e)	Distribution of Charge Profit and loss (f)	Date Declared (g)	Date Payable (h)
				$	$	$		
31								
32								
33								
34								
35				NONE				
36								
37								
38								
39								
40								
41								
42				TOTAL				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties–Profit" or as "Separately Operated Properties–Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b) $			Remarks (c)
1	I. TRANSPORTATION	x x x	x x	x x	
2	(101) Express, domestic	411	344	695	
3	(102) Express, foreign		525	544	
4	(103) Miscellaneous		533	015	
5	Total transportation	412	403	254	
6	II. CONTRACT PAYMENTS	x x x	x x	x x	
7	(104) Express privileges—Dr.	118	195	599	
8	Revenue from transportation	294	207	655	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	x x	x x	
10	(105) Customs brokerage fees	1	052	371	
11	(106) Order and commission		7	178	
12	(107) Rents of buildings and other property		186	415	
13	(108) Money orders		NONE		
14	(109) C. O. D. checks	1	162	046	
15	(110) Limited and unlimited cheques		NONE		
16	(111) Travelers cheques		"		
17	(112) Telegraph and cable transfers		"		
18	(113) Letters of credit		"		
19	(114) Foreign postal remittances		"		
20	(115) Profit on exchange and other financial revenue		"		
21	(116) Miscellaneous	1	738	177	
22	Total other than transportation	4	115	187	
23	Total operating revenues	298	353	842	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $			Loss (d) $		
41	Railway Express Motor Transport,							
42	Incorporated	219 E. 42nd St., New York, N.Y.		5	296			
43								
44	Railway Express Agency, Incorpo-							
45	rated, of California	219 E. 42nd St., New York, N.Y.			926			
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59		NET TOTAL		5	222			

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$				$	$
1	x x x	INVESTMENT			x x x	x x x
2	x x x				x x x	x x x
3	127 925 712	(501) Real property and equipment (p. 25)	3140 322 287	NONE	140 322 187	12 396 475
4	NONE	(502) Sinking funds (p. 37)	NONE	NONE	NONE	-
5	30 115	(503) Miscellaneous physical property (p. 23)			14 093	(15 022)
6	x x x	(504) Investments in affiliated companies—			x x x	x x x
7	548 500	(A) Stocks (pp. 30 and 34)			548 500	-
8	NONE	(B) Bonds (pp. 32 and 35)			NONE	-
9	557 000	(C) Notes			1 002 452	445 452
10	NONE	(D) Advances			NONE	-
11	x x x	(505) Other investments—			x x x	x x x
12	NONE	(A) Stocks (pp. 31 and 34)			NONE	-
13	1 000	(B) Bonds (pp. 33 and 35)			1 040	40
14	NONE	(C) Notes			NONE	-
15	"	(D) Advances			"	-
16	129 062 327	Total investment			141 888 272	12 825 945
17	x x x	CURRENT ASSETS			x x x	x x x
18	24 546 381	(506) Cash (See Note 1)			23 009 535	(1 536 846)
19	5 240	(507) Special deposits			6 350	1 110
20	30 018 855	(508) Loans and notes receivable			18 393 752	(11 625 103)
21	238 509	(509) Traffic balances receivable			263 472	24 963
22	19 424 058	(510) Net balances receivable from agents and messengers			20 495 113	2 071 055
23	4 462 488	(511) Miscellaneous accounts receivable			5 741 551	1 259 063
24	578 572	(512) Material and supplies			740 460	161 888
25	116 338	(513) Interest, dividends, and rents receivable			136 812	20 474
26	1 800	(514) Working fund advances			6 860	5 060
27	851 944	(515) Other current assets			873 516	21 572
28	79 264 195	Total current assets			69 667 528	(9 596 667)
29	x x x	DEFERRED ASSETS			x x x	x x x
30	x x x		(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b)	x x x	x x x
31	80 259	(516) Insurance and other reserve funds (p. 37)	540 251	NONE	40 261	(39 998)
32	NONE	(517) Provident funds (p. 37)	NONE	"	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 37)	"	"	"	-
34		(519) Advance payments on contracts			"	-
35	64 059	(520) Other deferred assets			98 878	(33 819)
36	145 218	Total deferred assets			139 139	(6 079)
37	x x x	UNADJUSTED DEBITS			x x x	x x x
38	90 849	(521) Rents and insurance premiums paid in advance			105 092	14 243
39	701 913	(522) Taxes paid in advance			713 475	11 562
40	NONE	(523) Discount on capital stock			NONE	-
41	"	(524) Discount on funded debt			"	-
42	104 183	(525) Other unadjusted debits		Par value of holding at close of year	1 424 527	1 320 344
43	x x x	(526) Securities issued or assumed—Unpledged (pp. 17 and 21)		75 812	x x x	x x x
44	x x x	(527) Securities issued or assumed—Pledged (pp. 17 and 21)		NONE	x x x	x x x
45	896 945	Total unadjusted debits			2 243 194	1 346 249
46	209 338 385	GRAND TOTAL			213 938 133	4 569 448

( ) Decrease

NOTE 1: At December 31, 1964, there were outstanding $8,968,865 of checks, vouchers and drafts issued prior to January 1, 1965. This total is included in Current Liabilities and Cash with Treasurer.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase or decrease) (d)
	$		$	$
1	x x x	STOCK	x x x	x x x
2	x x x	(b) Total book liability at close of year / (b1) Portion held by or for respondent at close of year	x x x	x x x
3	1 999 188	(528) Capital stock (p. 17) 2 075 000 / 75 812	1 999 188	-
4	NONE	(529) Premium on capital stock NONE / NONE	NONE	NONE
5	1 999 188	Total stock liabilities 2 075 000 / 75 812	1 999 188	-
6	x x x	LONG-TERM DEBT	x x x	x x x
7	x x x	(b) Total book liability at close of year / (b1) Portion held by or for respondent at close of year	x x x	x x x
8	52 702 024	(530) Funded debt unmatured (p. 21) 52 414 015 / NONE	52 414 015	(288 009)
9	x x x	CURRENT LIABILITIES	x x x	x x x
10	NONE	(531) Loans and notes payable	NONE	NONE
11	15 530	(532) Traffic balances payable	224 952	209 422
12	14 347 374	(533) Audited accounts and wages unpaid	15 017 182	669 808
13	5 458 031	(534) Miscellaneous accounts payable	5 633 712	175 681
14	51 638	(535) Matured interest, dividends, and rents unpaid	59 689	8 051
15	NONE	(536) Matured funded debt unpaid	NONE	NONE
16	3 329	(537) Miscellaneous advances payable	3 198	(131)
17	1 175 901	(538) Unpaid money orders, checks, and drafts	1 285 434	110 533
18	12 784 638	(539) Express privilege liabilities	12 496 820	(287 818)
19	4 793 240	(540) Estimated tax liability	4 410 895	(382 345)
20	446 888	(541) Unmatured interest, dividends, and rents payable	470 663	23 775
21	14 000 532	(542) Other current liabilities	12 934 588	(1 065 944)
22	53 078 101	Total current liabilities (See Note 1, Page 14)	52 538 133	(539 968)
23	x x x	DEFERRED LIABILITIES	x x x	x x x
24	NONE	(543) Liability on account of provident funds	NONE	NONE
25	"	(544) Liability on account of fidelity and indemnity funds	"	"
26	74 755	(545) Other deferred liabilities	137 690	62 935
27	74 755	Total deferred liabilities	137 690	62 935
28	x x x	UNADJUSTED CREDITS	x x x	x x x
29	NONE	(546) Premium on funded debt	NONE	NONE
30	3 220 391	(547) Operating and insurance reserves	3 712 967	492 576
31	73 955 696	(548) Accrued depreciation—Buildings and equipment (p. 25A)	76 977 681	3 011 985
32	11 345	(550) Accrued depreciation—Miscellaneous physical property	7 391	(3 955)
33	9 325	(551) Other unadjusted credits	53 215	53 890
34	77 206 758	Total unadjusted credits	80 761 254	3 554 496
35	x x x	CORPORATE SURPLUS	x x x	x x x
36	NONE	(552) Additions to property through income and surplus	NONE	NONE
37	6 707 593	(553) Reserves from income and surplus	6 543 857	(63 736)
38	6 707 593	Total appropriated surplus	6 543 857	(63 736)
39	7 600 265	(554) Profit and loss balance (p. 28)	9 443 296	1 842 730
40	14 307 859	Total corporate surplus	15 987 153	1 779 994
41	209 358 685	GRAND TOTAL	213 938 133	4 559 448

NOTE.—Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation ..... $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation.. $ 5 543 857

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit ..... $ 700 062

( ) Decrease

* - Equipment Obligations and Notes Payable aggregating $34,776,961 of which installments of $6,874,203 will be paid during the calendar year 1965, are included in Account Funded Debt unmatured.

NOTE 2: Operating and Insurance Reserves include $2,932,827 which it is expected will be paid during the calendar year 1965.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 29)	431 384 871	x x x	x x x
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	119 251 735	x x x	x x x
4	Revenue from transportation	x x x	312 133 135	x x x
5	(302) Revenue from operations other than transportation (p. 29)	x x x	4 100 369	x x x
6	Total operating revenues (p. 29)	x x x	316 233 504	x x x
7	(315) Operating expenses (p. 40)	x x x	290 167 143	x x x
8	Net operating revenue*	x x x	26 066 361	x x x
9	(316) Uncollectible revenue from transportation	x x x	160 479	x x x
10	(317) Express taxes (p. 43)	x x x	26 038 595	x x x
11	Operating income*	x x x	x x x	(132 713)
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	2 124	x x x
14	(304) Miscellaneous rent income	x x x	148 048	x x x
15	(305) Net income from miscellaneous physical property (p. 23)	x x x	2 564	x x x
16	(306) Separately operated properties—Profit (p. 29)	x x x	6 735	x x x
17	(307) Dividend income (p. 35)	x x x	NONE	x x x
18	(308) Income from funded securities (p. 35)	x x x	49 880	x x x
19	(309) Income from unfunded securities and accounts	x x x	888 311	x x x
20	(310) Income from sinking and other reserve funds	x x x	1 786	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 41)	x x x	3 935 836	x x x
24	Total other income	x x x	5 034 684	x x x
25	Gross income*	x x x	x x x	4 901 971
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	370 550	x x x
29	(320) Miscellaneous taxes	x x x	882	x x x
30	(321) Net loss on miscellaneous physical property (p. 23)	x x x	NONE	x x x
31	(322) Separately operated properties—Loss (p. 29)	x x x	"	x x x
32	(323) Interest on funded debt (p. 21)	x x x	3 429 507	x x x
33	(324) Interest on unfunded debt	x x x	31 296	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	80 181	x x x
37	Total deductions from gross income	x x x	3 912 416	x x x
38	Net income*	x x x	x x x	989 555
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 28)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	989 555

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation $1,042,320
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . $ 78,271

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 28.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x	9 443 995	
2	(402) Credit balance transferred from income	x x x	989 555	
3	(403) Profit on real property and equipment sold	x x x	585 589	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unrefundable overcharges	x x x	1 199	
6	(406) Miscellaneous profit and loss credits*	x x x	1 067 482	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	"	x x x	
9	(409) Surplus applied to sinking and other reserve funds	"	x x x	
10	(410) Dividend appropriations of surplus (p. 28)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	"	x x x	
15	(415) Loss on land sold	9 614	x x x	
16	(416) Delayed income debits*	NONE	x x x	
17	(417) Miscellaneous profit and loss debits*	211 600	x x x	
18	† ..... balance carried to Balance Sheet	11 857 607		
19	TOTAL	12 088 821	12 088 321	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS:

Reductions in Deferred Taxes	$ 971 585
Drafts credited to Profit and Loss in current year	86 220
Miscellaneous	9 676
Total	$1 067 482

MISCELLANEOUS PROFIT AND LOSS DEBITS:

Interest expenses on Corporate Tax Adjustments	$184 533
Fines imposed by U. S. Government	10 993
Drafts credited to Profit and Loss in prior years, paid in current year	12 195
Miscellaneous	3 879
Total	$211 600

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent: Regular (b)	Rate Percent: Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge: Income (e)	Distribution of Charge: Profit and loss (f)	Date: Declared (g)	Date: Payable (h)
				$	$	$		
31								
32								
33								
34								
35				NONE				
36								
37								
38								
39								
40								
41								
42				TOTAL				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties—Profit" or as "Separately Operated Properties—Loss" on page 21.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b) $	Remarks (c)
1	I. TRANSPORTATION	x x x	
2	(101) Express, domestic	430 445 863	
3	(102) Express, foreign	491 232	
4	(103) Miscellaneous	447 776	
5	Total transportation	431 384 871	
6	II. CONTRACT PAYMENTS	x x x	
7	(104) Express privileges—Dr.	119 251 736	
8	Revenue from transportation	312 133 135	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	
10	(105) Customs brokerage fees	1 099 011	
11	(106) Order and commission	7 482	
12	(107) Rents of buildings and other property	185 570	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	1 069 896	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue		
21	(116) Miscellaneous	1 737 410	
22	Total other than transportation	4 100 369	
23	Total operating revenues	316 233 504	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $	Loss (d) $
41	Railway Express Motor Transport,			
42	Incorporated	219 E. 42nd St., New York, N.Y.	5 865	
43				
44	Railway Express Agency, Incorpo-			
45	rated, of California	219 E. 42nd St., New York, N.Y.	869	
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59		NET TOTAL	6 735	

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, Decrease in red) (d)
	$		$	$
1	x x x	**INVESTMENT**	x x x	x x x
2	x x x	(b) Total book assets at close of year / (b) Respondent's own issues included in (b)	x x x	x x x
3	140 322 187	(501) Real property and equipment (p. 25) 3149 881 162 / NONE	149 881 162	9 558 975
4	NONE	(502) Sinking funds (p. 37) NONE / NONE	NONE	-
5	14 093	(503) Miscellaneous physical property (p. 23)	14 093	-
6	x x x x x x	(504) Investments in affiliated companies—	x x x x x x	x x x x x x
7	548 500	(A) Stocks (pp. 30 and 34)	548 500	-
8	NONE	(B) Bonds (pp. 32 and 35)	NONE	-
9	1 002 452	(C) Notes	1 500 000	497 548
10	NONE	(D) Advances	NONE	-
11	x x x x x x	(505) Other investments—	x x x x x x	x x x x x x
12	NONE	(A) Stocks (pp. 31 and 34)	NONE	-
13	1 040	(B) Bonds (pp. 33 and 35)	4 040	3 000
14	NONE	(C) Notes	NONE	-
15	"	(D) Advances	"	-
16	141 888 272	Total investment	151 947 795	10 059 523
17	x x x x x x	**CURRENT ASSETS**	x x x x x x	x x x x x x
18	23 002 535	(506) Cash (See Note 1)	13 558 244	(9 451 291)
19	6 350	(507) Special deposits	3 045	(3 305)
20	18 393 759	(508) Loans and notes receivable	29 134 250	10 740 492
21	263 472	(509) Traffic balances receivable	171 002	(89 470)
22	20 495 113	(510) Net balances receivable from agents and messengers	24 528 874	4 033 761
23	5 741 551	(511) Miscellaneous accounts receivable	5 522 736	781 185
24	740 450	(512) Material and supplies	893 561	153 111
25	136 812	(513) Interest, dividends, and rents receivable	136 740	(72)
26	6 860	(514) Working fund advances	8 710	1 850
27	873 615	(515) Other current assets	1 213 580	339 964
28	69 657 528	Total current assets	76 173 742	6 506 214
29	x x x x x x	**DEFERRED ASSETS**	x x x x x x	x x x x x x
30	x x x x x x	(b) Total book assets at close of year / (b) Respondent's own issues included in (b)	x x x x x x	x x x x x x
31	40 261	(516) Insurance and other reserve funds (p. 37) $40 263 / NONE	40 263	2
32	NONE	(517) Provident funds (p. 37) NONE / "	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 37) " / "	"	-
34	"	(519) Advance payments on contracts	"	-
35	98 878	(520) Other deferred assets	88 186	(10 692)
36	139 139	Total deferred assets	128 449	(10 690)
37	x x x x x x	**UNADJUSTED DEBITS**	x x x x x x	x x x x x x
38	105 092	(521) Rents and insurance premiums paid in advance	170 457	65 365
39	713 475	(522) Taxes paid in advance	870 897	157 422
40	NONE	(523) Discount on capital stock	NONE	-
41	"	(524) Discount on funded debt	"	-
42	1 424 627	(525) Other unadjusted debits	4 999 041	3 574 414
43	x x x x x x	(526) Securities issued or assumed—Unpledged (pp. 17 and 21) Par value of holding at close of year $6 812	x x x x x x	x x x x x x
44	x x x x x x	(527) Securities issued or assumed—Pledged (pp. 17 and 21) NONE	x x x x x x	x x x x x x
45	2 243 194	Total unadjusted debits	6 040 495	3 797 301
46	213 938 133	GRAND TOTAL	234 290 461	20 352 348

( ) Decrease

NOTE 1: At December 31, 1965, there were outstanding $11,290,426 of checks, vouchers and drafts issued prior to January 1, 1966. This total is included in Current Liabilities and Cash with Treasurer.

1965

Supplementary Statement
of
Contingent Liabilities Not Included in the Body
of The Balance Sheet Statement

Under the terms of a certain obligation of a subsidiary company, the Company would be required to purchase capital stock of the subsidiary company in order that the ratio of Indebtedness to Net Worth of the subsidiary shall not exceed 5 to 1 at any time.

In July, 1963 the Board of Directors of the Company approved a new pension plan for noncontract supervisory employes to be effective on January 1, 1964. The new plan is a funded plan with optional employee contribution. Funding the plan will be completed over ten or more years. Based on the most recent study by the Company's Actuarial Consultants, the past service liability under the revised plan amounted to approximately $14,000,000 on June 30, 1965.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$		$	$
1	x x x	STOCK	x x x	x x x
2	x x x	(b) Total book liability at close of year / (b) Portion held by or for respondent at close of year	x x x	x x x
3	1 999 188	(528) Capital stock (p. 17) — 2 075 000 / 76 812	1 999 188	-
4	NONE	(529) Premium on capital stock — NONE / NONE	NONE	-
5	1 999 188	Total stock liabilities — 2 075 000 / 76 812	1 999 188	-
6	x x x	LONG-TERM DEBT	x x x	x x x
7	x x x	(b) Total book liability at close of year / (b) Portion held by or for respondent at close of year	x x x	x x x
8	62 414 015	(530) Funded debt unmatured (p. 21) — * 71 294 707 / NONE	71 294 707	8 880 692
9	x x x	CURRENT LIABILITIES	x x x	x x x
10	NONE	(531) Loans and notes payable	256 883	256 883
11	224 952	(532) Trade balances payable	636 150	411 198
12	15 017 182	(533) Audited accounts and wages unpaid	15 354 739	337 557
13	5 633 712	(534) Miscellaneous accounts payable	4 288 285	(1 345 427)
14	59 689	(535) Matured interest, dividends, and rents unpaid	36 623	(23 066)
15	NONE	(536) Matured funded debt unpaid	NONE	-
16	3 198	(537) Miscellaneous advances payable	3 122	(76)
17	1 286 434	(538) Unpaid money orders, checks, and drafts	1 129 900	(156 534)
18	12 496 820	(539) Express privilege liabilities	13 512 903	1 016 083
19	4 410 895	(540) Estimated tax liability	4 749 843	338 948
20	470 563	(541) Unmatured interest, dividends, and rents payable	493 123	22 560
21	12 934 588	(542) Other current liabilities	20 356 862	7 422 274
22	52 538 133	Total current liabilities (See Note 1, Page 44)	60 818 434	8 280 301
23	x x x	DEFERRED LIABILITIES	x x x	x x x
24	NONE	(543) Liability on account of provident funds	NONE	-
25	"	(544) Liability on account of fidelity and indemnity funds	"	-
26	137 690	(545) Other deferred liabilities	166 546	28 856
27	137 690	Total deferred liabilities	166 546	28 856
28	x x x	UNADJUSTED CREDITS	x x x	x x x
29	NONE	(546) Premium on funded debt	NONE	-
30	3 712 967	(547) Operating and insurance reserves (See Note 2)	4 024 810	311 843
31	76 977 681	(548) Accrued depreciation—Buildings and equipment (p. 25A)	78 681 010	1 703 329
32	7 391	(550) Accrued depreciation—Miscellaneous physical property	7 820	429
33	63 215	(551) Other unadjusted credits	431 164	367 949
34	80 761 254	Total unadjusted credits	83 144 804	2 383 550
35	x x x	CORPORATE SURPLUS	x x x	x x x
36	NONE	(552) Additions to property through income and surplus	NONE	-
37	6 643 857	(553) Reserves from income and surplus	4 999 195	(1 644 662)
38	6 643 857	Total appropriated surplus	4 999 195	(1 644 662)
39	9 443 296	(554) Profit and loss balance (p. 28)	11 867 607	2 423 611
40	16 087 853	Total corporate surplus	16 866 802	778 949
41	213 938 133	GRAND TOTAL	234 290 481	20 352 348

( ) - Decrease

NOTE.—Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation ..... $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation.. $ 4 999 195

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit ..... $ 776 333

The company can incur an estimated $ NONE in future earnings before paying Federal income taxes because of its unused and available net operating loss carryover on January 1, 1966.

* - Long Term Debt aggregating $71,294,707 include installments of $8,269,642 which will be paid during the calendar year 1966.

NOTE 2: Operating and Insurance Reserves include $3,781,500 which it is expected will be paid during the calendar year 1966.

Express
Annual Report Form E

ANNUAL REPORT

OF

RAILWAY EXPRESS AGENCY, INC.

TO THE

INTERSTATE COMMERCE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 1966

FUNDED DEBT

Designation of Bond or Obligation	TERM: Date of Issue	TERM: Date of Maturity	Total Par Value Authorized	Total Par Value Outstanding	TOTAL PAR VALUE HELD BY RESPONDENT: In Treasury	Pledged as Collateral	In Sinking or Other Funds	Total Par Value Not Held by Respondent	INTEREST: Rate	When Payable	Amount Accrued during the Year	Amount Paid During the Year
Collateral Trust Bonds				NONE								
Miscellaneous Funded Obligations: Non-Negotiable Notes	-	December 31, 1973	$ -	$27 296 010		NONE		$27 296 010	5%	Semi-annually	$1 368 705	$1 368 705
Equipment Obligations - Automotive Equipment - Conditional Sales Agreement	-	May 1, 1966	-	NONE		NONE		NONE	5%	Quarterly	6 261	11 295
Equipment Obligations - Automotive Equipment - Chattel Mortgage	-	July 1, 1967	-	1 238 170		NONE		1 238 170	5%	Quarterly	93 899	93 899
Equipment Obligations - Refrigerator Cars - Conditional Sale Agreement	-	December 1, 1972	-	4 403 506		NONE		4 403 506	4-3/4%	Semi-annually	233 168	236 159
Equipment Obligations - Automotive Equipment Chattel Mortgage	-	March 15, 1969	-	1 836 409		NONE		1 836 409	4-3/4%	Quarterly	111 002	112 698
Promissory Note	-	December 31, 1977	-	11 198 000		NONE		11 198 000	6%	Semi-annually	690 810	690 810
Equipment Obligations - Automotive Equipment Chattel Mortgage	-	December 15, 1969	-	2 483 167		NONE		2 483 167	4-3/4%	Quarterly	141 350	143 028
Equipment Obligations - Automotive Equipment Chattel Mortgage	-	November 15, 1970	-	4 663 382		NONE		4 663 382	4½%	Quarterly	236 247	242 846
Equipment Obligations - Automotive Equipment Chattel Mortgage	-	January 15, 1972	-	8 317 978		NONE		8 317 978	4¾%	Quarterly	402 164	395 030
Equipment Obligations - Conveyor Equipment Unsecured Promissory Note	-	November 15, 1970	-	1 536 232		NONE		1 536 232	4½%	Quarterly	77 786	79 944
Receipts Outstanding for Funded Debt				NONE								
	TOTAL		$ -	$62 972 854				$62 972 854			$3 361 392	$3 374 425

31 00

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. Operating Income	x x x	x x x	x x x
2	(301) Charges for transportation (p. 29)	430 780 929	x x x	x x x
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	111 269 670	x x x	x x x
4	Revenue from transportation	x x x	319 511 259	x x x
5	(302) Revenue from operations other than transportation (p. 29)	x x x	4 117 940	x x x
6	Total operating revenues (p. 29)	x x x	323 629 199	x x x
7	(315) Operating expenses (p. 40)	x x x	299 608 476	x x x
8	Net operating revenue*	x x x	24 020 723	x x x
9	(316) Uncollectible revenue from transportation	x x x	293 123	x x x
10	(317) Express taxes (p. 43)	x x x	25 721 625	x x x
11	Operating income*	x x x	x x x	(1 994 025)
12	II. Other Income	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	1 986	x x x
14	(304) Miscellaneous rent income	x x x	175 763	x x x
15	(305) Net income from miscellaneous physical property (p. 23)	x x x	—	x x x
16	(306) Separately operated properties—Profit (p. 29)	x x x	7 505	x x x
17	(307) Dividend income (p. 35)	x x x	3 156	x x x
18	(308) Income from funded securities (p. 35)	x x x	88 256	x x x
19	(309) Income from unfunded securities and accounts	x x x	1 091 748	x x x
20	(310) Income from sinking and other reserve funds	x x x	507	x x x
21	(311) Release of premiums on funded debt	x x x	NONE	x x x
22	(312) Contributions from other companies	x x x	"	x x x
23	(313) Miscellaneous income (p. 41)	x x x	3 757 211	x x x
24	Total other income	x x x	5 126 132	x x x
25	Gross income*	x x x	x x x	3 132 107
26	III. Deductions From Gross Income	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	NONE	x x x
28	(319) Miscellaneous rents	x x x	284 914	x x x
29	(320) Miscellaneous taxes	x x x	2 486	x x x
30	(321) Net loss on miscellaneous physical property (p. 23)	x x x	561	x x x
31	(322) Separately operated properties—Loss (p. 29)	x x x	NONE	x x x
32	(323) Interest on funded debt (p. 21)	x x x	3 361 392	x x x
33	(324) Interest on unfunded debt	x x x	23 323	x x x
34	(325) Amortization of discount on funded debt	x x x	NONE	x x x
35	(326) Income transferred to other companies	x x x	"	x x x
36	(327) Miscellaneous income debits	x x x	76 426	x x x
37	Total deductions from gross income	x x x	3 749 102	x x x
38	Net income*	x x x	x x x	(616 995)
39	IV. Disposition of Net Income	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 28)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	$(616 995)

* If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of ..... $ NONE

If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation ..... $ NONE

If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit .. $ NONE

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 28.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x	11 867 607	
2	(402) Credit balance transferred from income	x x x	NONE	
3	(403) Profit on real property and equipment sold	x x x	20 321	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unrefundable overcharges	x x x	1 393	
6	(406) Miscellaneous profit and loss credits*	x x x	2 831 366	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	615 995	x x x	
9	(409) Surplus applied to sinking and other reserve funds	NONE	x x x	
10	(410) Dividend appropriations of surplus (p. 28)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	2 738	x x x	
15	(415) Loss on land sold	NONE	x x x	
16	(416) Delayed income debits*	53 062	x x x	
17	(417) Miscellaneous profit and loss debits*	x x x	x x x	
18	† Credit balance carried to Balance Sheet	- 14 017 892		
19	TOTAL	14 720 687	14 720 687	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS:

Reduction in Deferred Taxes	$2 690 955
Drafts credited to Profit and Loss in current year	123 594
Profit derived from Redemption of Promissory Notes	10 932
Miscellaneous	5 884
Total	$2 831 366

MISCELLANEOUS PROFIT AND LOSS DEBITS:

Fines imposed by U. S. Government	$ 9 925
Drafts credited to Profit and Loss in prior years, paid in current year	6 932
Loss on Sale of Stock Certificates	26 482
Loss on Sale of U.S. Treasury Bonds	4 629
Miscellaneous	5 094
Total	$ 53 062

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent: Regular (b)	Rate Percent: Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge: Income (e)	Distribution of Charge: Profit and loss (f)	Date: Declared (g)	Date: Payable (h)
				$	$	$		
31								
32								
33								
34								
35								
36								
37								
38				NONE				
39								
40								
41								
42				TOTAL				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties—Profit" or as "Separately Operated Properties—Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)			Remarks (c)
		$			
1	I. TRANSPORTATION	x x x			
2	(101) Express, domestic	429	824	570	
3	(102) Express, foreign		526	810	
4	(103) Miscellaneous		429	549	
5	Total transportation	430	780	929	
6	II. CONTRACT PAYMENTS	x x x			
7	(104) Express privileges—Dr	111	269	670	
8	Revenue from transportation	319	511	259	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x			
10	(105) Customs brokerage fees	1	065	625	
11	(106) Order and commission		6	832	
12	(107) Rents of buildings and other property		214	282	
13	(108) Money orders		NONE		
14	(109) C. O. D. checks	1	007	609	
15	(110) Limited and unlimited cheques		NONE		
16	(111) Travelers cheques		"		
17	(112) Telegraph and cable transfers		"		
18	(113) Letters of credit		"		
19	(114) Foreign postal remittances		"		
20	(115) Profit on exchange and other financial revenue		"		
21	(116) Miscellaneous	1	823	592	
22	Total other than transportation	4	117	940	
23	Total operating revenues	323	629	199	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c)			Loss (d)		
			$			$		
41	Railway Express Motor Transport,							
42	Incorporated	219 East 42nd St., New York, N.Y.		6	680			
43								
44	Railway Express Agency,							
45	Incorporated, of California	219 East 42nd St., New York, N.Y.			825			
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59		NET TOTAL		7	505			

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b1)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$				$	$
1	x x x	INVESTMENT			x x x	x x x
2	x x x				x x x	x x x
3	149 881 162	(501) Real property and equipment (p. 25)	$149 454 163	NONE	149 454 163	(426 999)
4	NONE	(502) Sinking funds (p. 37)	NONE	NONE	NONE	-
5	14 093	(503) Miscellaneous physical property (p. 23)			111 451	97 358
6	x x x	(504) Investments in affiliated companies—			x x x	x x x
7	548 500	(A) Stocks (pp. 30 and 34)			548 500	-
8	NONE	(B) Bonds (pp. 32 and 35)			NONE	-
9	1 500 000	(C) Notes			2 000 000	500 000
10	NONE	(D) Advances			NONE	-
11	x x x	(505) Other investments—			x x x	x x x
12	NONE	(A) Stocks (pp. 31 and 34)			NONE	-
13	4 040	(B) Bonds (pp. 33 and 35)			3 040	(1 000)
14	NONE	(C) Notes			NONE	-
15	"	(D) Advances			"	-
16	151 947 795	Total investment			152 117 154	169 359
17	x x x	CURRENT ASSETS			x x x	x x x
18	13 558 244	(506) Cash			6 453 703	(7 104 541)
19	3 045	(507) Special deposits			1 539 672	1 536 627
20	29 134 250	(508) Loans and notes receivable			13 540 700	(15 593 550)
21	174 002	(509) Traffic balances receivable			196 423	22 421
22	24 528 874	(510) Net balances receivable from agents and messengers			21 421 002	(3 107 872)
23	6 522 736	(511) Miscellaneous accounts receivable			7 895 433	1 372 697
24	893 561	(512) Material and supplies			990 423	96 862
25	136 740	(513) Interest, dividends, and rents receivable			75 762	(60 978)
26	8 710	(514) Working fund advances			11 360	2 650
27	1 213 580	(515) Other current assets			2 164 796	951 216
28	76 173 742	Total current assets			54 289 274	(21 884 456)
29	x x x	DEFERRED ASSETS			x x x	x x x
30	x x x		(b1) Total book assets at close of year	(b2) Respondent's own issues included in (b1)	x x x	x x x
31	40 263	(516) Insurance and other reserve funds (p. 37)	$14 409	NONE	14 409	(25 854)
32	NONE	(517) Provident funds (p. 37)	NONE	"	NONE	-
33	"	(518) Fidelity and indemnity funds (p. 37)	"	"	"	-
34	"	(519) Advance payments on contracts			"	-
35	88 186	(520) Other deferred assets			60 820	(27 366)
36	128 449	Total deferred assets			75 229	(53 220)
37	x x x	UNADJUSTED DEBITS			x x x	x x x
38	170 457	(521) Rents and insurance premiums paid in advance			377 855	207 398
39	870 897	(522) Taxes paid in advance			790 792	(80 105)
40	NONE	(523) Discount on capital stock			NONE	-
41	"	(524) Discount on funded debt			"	-
42	4 999 111	(525) Other unadjusted debits		Par value of holding at close of year	6 233 366	1 234 255
43	x x x	(526) Securities issued or assumed—Unpledged (pp. 17 and 21)		76 812	x x x	x x x
44	x x x	(527) Securities issued or assumed—Pledged (pp. 17 and 21)		NONE	x x x	x x x
45	6 040 495	Total unadjusted debits			7 402 043	1 361 548
46	234 290 481	GRAND TOTAL			213 883 700	(20 406 781)

( ) Decrease

1966

Supplementary Statement
of
Contingent Liabilities Not Included in the Body
of The Balance Sheet Statement

Under the terms of a certain obligation of a subsidiary company, the Company would be required to purchase capital stock of the subsidiary company in order that the ratio of Indebtedness to Net Worth of the subsidiary shall not exceed 5 to 1 at any time.

In July, 1963 the Board of Directors of the Company approved a new pension plan for noncontract supervisory employes to be effective on January 1, 1964. The new plan is a funded plan with optional employee contribution. Funding the plan will be completed over ten or more years. Based on the most recent study by the Company's Actuarial Consultants, the past service liability under the revised plan amounted to approximately $14,000,000 on June 30, 1966.

The Company has sold 29 terminals under a sale and leaseback agreement. The lease covers a twenty-five year term at an aggregate annual rental of $378,000 for the first ten years and $428,000 thereafter.

Under the lease agreement, if the Company considers any parcel of leased property uneconomical or unsuitable for continued use and occupancy, it must make an offer to purchase the property at a price equal to the lessor's unrecovered cost.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(ba) Total book liability at close of year	(bb) Portion held by or for respondent at close of year	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$				$	$
1	x x x	STOCK			x x x	x x x
2	x x x				x x x	x x x
3	1 999 183	(523) Capital stock (p. 17)	2 076 000	76 812	1 999 183	-
4	NONE	(529) Premium on capital stock	NONE	NONE	NONE	-
5	1 999 183	Total stock liabilities	2 076 000	76 812	1 999 183	-
6	x x x	LONG-TERM DEBT			x x x	x x x
7	x x x				x x x	x x x
8	71 294 707	(530) Funded debt unmatured (p. 21)	* 62 972 855	NONE	62 972 855	(8 321 852)
9	x x x	CURRENT LIABILITIES			x x x	x x x
10	256 883	(531) Loans and notes payable			NONE	(256 883)
11	636 150	(532) Traffic balances payable			1 176 462	540 312
12	15 354 739	(533) Audited accounts and wages unpaid			3 983 448	(11 371 291)
13	4 288 286	(534) Miscellaneous accounts payable			3 576 070	(712 216)
14	36 623	(535) Matured interest, dividends, and rents unpaid			15 594	(21 029)
15	NONE	(536) Matured funded debt unpaid			NONE	-
16	3 122	(537) Miscellaneous advances payable			4 948	1 826
17	1 129 900	(538) Unpaid money orders, checks, and drafts			NONE	(1 129 900)
18	13 512 903	(539) Express privilege liabilities			11 170 757	(2 342 146)
19	4 749 843	(540) Estimated tax liability			4 834 392	84 549
20	493 123	(541) Unmatured interest, dividends, and rents payable			478 146	(14 977)
21	20 356 852	(542) Other current liabilities			16 347 368	(4 009 494)
22	60 818 434	Total current liabilities			41 587 185	(19 231 249)
23	x x x	DEFERRED LIABILITIES			x x x	x x x
24	NONE	(543) Liability on account of provident funds			NONE	-
25	"	(544) Liability on account of fidelity and indemnity funds			"	-
26	166 516	(545) Other deferred liabilities			92 054	(74 462)
27	166 516	Total deferred liabilities			92 054	(74 462)
28	x x x	UNADJUSTED CREDITS			x x x	x x x
29	NONE	(546) Premium on funded debt			NONE	-
30	4 024 810	(547) Operating and insurance reserves (See Note 1)			4 732 021	707 211
31	78 681 010	(548) Accrued depreciation—Buildings and equipment (p. 25A)			81 837 474	3 156 464
32	7 820	(550) Accrued depreciation—Miscellaneous physical property			61 642	53 822
33	431 164	(551) Other unadjusted credits			51 280	(379 884)
34	83 144 804	Total unadjusted credits			86 682 417	3 537 613
35	x x x	CORPORATE SURPLUS			x x x	x x x
36	NONE	(552) Additions to property through income and surplus			NONE	-
37	4 999 195	(553) Reserves from income and surplus			6 502 109	1 502 914
38	4 999 195	Total appropriated surplus			6 502 109	1 502 914
39	11 867 607	(554) Profit and loss balance (p. 28)			14 047 892	2 180 285
40	16 866 802	Total corporate surplus			20 550 001	3 683 199
41	234 290 481	GRAND TOTAL			213 883 700	(20 406 761)

NOTE.–Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation ..... $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation.. $ 6,502,109

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit ..... $ 778 333

Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1, 1967..... $ NONE

* - Long Term Debt aggregating $62, 972,855 includes installments of $7,458,189 which will be paid during the calendar year 1967.

NOTE 1: Operating and Insurance Reserves include $4,637,221 which it is expected will be paid during the calendar year 1967.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. OPERATING INCOME			
2	(301) Charges for transportation (p. 29)	423 077 583		
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	104 000 027		
4	Revenue from transportation		319 077 483	
5	(302) Revenue from operations other than transportation (p. 29)		4 149 134	
6	Total operating revenues (p. 29)		323 226 667	
7	(315) Operating expenses (p. 40)		307 259 039	
8	Net operating revenue*		15 967 628	
9	(316) Uncollectible revenue from transportation		198 061	
10	(317) Express taxes (p. 43)		29 289 194	
11	Operating income*			(13 519 627)
12	II. OTHER INCOME			
13	(303) Rent from real property and equipment used jointly		1 846	
14	(304) Miscellaneous rent income		118 567	
15	(305) Net income from miscellaneous physical property (p. 23)			969
16	(306) Separately operated properties—Profit (p. 29)		7 972	
17	(307) Dividend income (p. 35)			–
18	(308) Income from funded securities (p. 35)		121 353	
19	(309) Income from unfunded securities and accounts		313 278	
20	(310) Income from sinking and other reserve funds			449
21	(311) Release of premiums on funded debt		NONE	
22	(312) Contributions from other companies		"	
23	(313) Miscellaneous income (p. 41)		3 508 801	
24	Total other income		4 073 235	
25	Gross income*			(9 446 392)
26	III. DEDUCTIONS FROM GROSS INCOME			
27	(318) Rent for real property and equipment used jointly		NONE	
28	(319) Miscellaneous rents		121 434	
29	(320) Miscellaneous taxes		3 541	
30	(321) Net loss on miscellaneous physical property (p. 23)		NONE	
31	(322) Separately operated properties—Loss (p. 29)		"	
32	(323) Interest on funded debt (p. 21)		2 985 904	
33	(324) Interest on unfunded debt		60 923	
34	(325) Amortization of discount on funded debt		NONE	
35	(326) Income transferred to other companies		"	
36	(327) Miscellaneous income debits		223 205	
37	Total deductions from gross income		3 395 007	
38	Net income*			(12 841 399)
39	IV. DISPOSITION OF NET INCOME			
40	(328) Income applied to sinking and other reserve funds		NONE	
41	(329) Dividend appropriations of income (p. 28)		"	
42	(330) Income appropriations for investment in physical property		"	
43	(331) Stock discount extinguished through income		"	
44	(332) Miscellaneous appropriations of income		"	
45	Total appropriations		"	
46	Income balance transferred to Profit and Loss*			(12 841 399)

* If deficit, indicate in parenthesis.

NOTE.–Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of. . . . . $ NONE

If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ NONE

If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . $ NONE

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PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 25.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
1	(401) Credit balance at beginning of year		14 047 392	
2	(402) Credit balance transferred from income		NONE	
3	(403) Profit on real property and equipment sold		67 274	
4	(404) Delayed income credits*		NONE	
5	(405) Unrefundable overcharges		43	
6	(406) Miscellaneous profit and loss credits*		4 952 843	
7	(407) Debit balance at beginning of year	NONE		
8	(408) Debit balance transferred from income	12 841 399		
9	(409) Surplus applied to sinking and other reserve funds	NONE		
10	(410) Dividend appropriations of surplus (p. 28)	"		
11	(411) Surplus set aside for investment in physical property	"		
12	(412) Stock discount extinguished through surplus	"		
13	(413) Debt discount extinguished through surplus	"		
14	(414) Miscellaneous appropriations of surplus	"		
15	(415) Loss on land sold	141		
16	(416) Delayed income debits*	NONE		
17	(417) Miscellaneous profit and loss debits*	4 393 471		
18	† Credit balance carried to Balance Sheet	1 840 741		
19	TOTAL	19 075 752	19 075 752	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS:

Reduction in Deferred Taxes	$4 677 000
Drafts credited to Profit and Loss in current year	254 803
Profit derived from Redemption of Promissory Notes	10 765
Prior Year Reserve Adjustments	6 203
Forfeiture of Deposit by Building Contractor	6 900
Miscellaneous	4 172
Total	$4 959 843

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fines imposed by U. S. Government	$ 7 869
Drafts credited to Profit and Loss in prior years, paid in current year	19 903
Penalty for Delinquent Payment of Licenses and Taxes	4 528
Settlement of New York World's Fair 1964-65 Corporation's Claim	9 800
Write off of Cosmic Expenses, Net of Tax	4 167 765
Write off of Unamortized Equipment - Installation Costs, Net of Tax	178 959
Miscellaneous	4 647
Total	$4 393 471

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent Regular (b)	Rate Percent Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge Income (e)	Distribution of Charge Profit and loss (f)	Date Declared (g)	Date Payable (h)
31								
32								
33								
34								
35				NONE				
36								
41								
42				TOTAL				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties—Profit" or as "Separately Operated Properties—Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b) $	Remarks (c)
1	I. TRANSPORTATION	x x x	
2	(101) Express, domestic	421 760 809	
3	(102) Express, foreign	952 083	
4	(103) Miscellaneous	364 697	
5	Total transportation	423 077 580	
6	II. CONTRACT PAYMENTS	x x x	
7	(104) Express privileges—Dr.	103 595 457	
8	Revenue from transportation	319 482 123	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	x x x	
10	(105) Customs brokerage fees	1 090 344	
11	(106) Order and commission	7 107	
12	(107) Rents of buildings and other property	198 184	
13	(108) Money orders	NONE	
14	(109) C. O. D. checks	892 318	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	1 961 231	
21	(116) Miscellaneous	4 149 184	
22	Total other than transportation	323 631 307	
23	Total operating revenues		

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $	Loss (d) $
41	Railway Express Motor Transport, Incorporated	219 East 42nd St., New York, N.Y.	7 210	
42				
43	Railway Express Agency, Incorporated, of California	219 East 42nd St., New York, N.Y.	762	
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58		NET TOTAL	7 972	
59				

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COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
	$		$	$
1	xxx	INVESTMENT	xxx	xxx
2	xxx	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	xxx	xxx
3	149 454 163	(501) Real property and equipment (p. 25) 2144 821 972 / NONE	144 821 972	(4 632 191)
4	NONE	(502) Sinking funds (p. 37) NONE / NONE	NONE	—
5	111 451	(503) Miscellaneous physical property (p. 23)	81 948	(29 503)
6	xxx	(504) Investments in affiliated companies—	xxx	xxx
7	548 500	(A) Stocks (pp. 30 and 34)	548 500	—
8	NONE	(B) Bonds (pp. 32 and 35)	NONE	—
9	2 000 000	(C) Notes	2 400 000	400 000
10	NONE	(D) Advances	NONE	—
11	xxx	(505) Other investments—	xxx	xxx
12	NONE	(A) Stocks (pp. 31 and 34)	NONE	—
13	3 040	(B) Bonds (pp. 33 and 35)	2 040	(1 000)
14	NONE	(C) Notes	NONE	—
15	"	(D) Advances	"	—
16	152 117 154	Total investment	147 854 460	(4 262 694)
17	xxx	CURRENT ASSETS	xxx	xxx
18	6 453 703	(506) Cash	6 077 331	(376 372)
19	1 539 672	(507) Special deposits	5 571	(1 534 101)
20	13 540 700	(508) Loans and notes receivable	1 555 813	(11 984 887)
21	196 423	(509) Traffic balances receivable	148 639	(47 784)
22	21 421 002	(510) Net balances receivable from agents and messengers	20 223 710	(1 197 292)
23	7 895 433	(511) Miscellaneous accounts receivable	9 961 382	2 065 949
24	990 423	(512) Material and supplies	1 029 855	39 432
25	75 762	(513) Interest, dividends, and rents receivable	36 660	(38 902)
26	11 360	(514) Working fund advances	9 685	(1 675)
27	2 164 796	(515) Other current assets	2 794 530	629 734
28	54 289 274	Total current assets	41 843 376	(12 445 898)
29	xxx	DEFERRED ASSETS	xxx	xxx
30	xxx	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	xxx	xxx
31	14 409	(516) Insurance and other reserve funds (p. 37) 21 186 680 / NONE	1 156 660	1 152 251
32	NONE	(517) Provident funds (p. 37) NONE / "	NONE	—
33	"	(518) Fidelity and indemnity funds (p. 37) " / "	"	—
34	"	(519) Advance payments on contracts	"	—
35	60 820	(520) Other deferred assets	58 870	(1 950)
36	75 229	Total deferred assets	1 225 530	1 150 301
37	xxx	UNADJUSTED DEBITS	xxx	xxx
38	377 855	(521) Rents and insurance premiums paid in advance	358 930	(18 925)
39	790 792	(522) Taxes paid in advance	591 471	(199 321)
40	NONE	(523) Discount on capital stock	NONE	—
41	"	(524) Discount on funded debt	"	—
42	6 233 396	(525) Other unadjusted debits / Par value of holding at close of year	1 295 669	(4 937 727)
43	xxx	(526) Securities issued or assumed—Unpledged (pp. 17 and 21) 76 812	xxx	xxx
44	xxx	(527) Securities issued or assumed—Pledged (pp. 17 and 21) NONE	xxx	xxx
45	7 402 043	Total unadjusted debits	2 246 073	(5 155 970)
46	213 883 700	GRAND TOTAL	193 169 439	(20 714 261)

( ) Decrease

Supplementary Statement
of
Contingent Liabilities Not Included in the Body
of The Balance Sheet Statement

Under the terms of a certain obligation of a subsidiary company, the Company would be required to purchase capital stock of the subsidiary company in order that the ratio of Indebtedness to Net Worth of the subsidiary shall not exceed 5 to 1 at any time.

In July, 1963 the Board of Directors of the Company approved a new pension plan for noncontract supervisory employes to be effective on January 1, 1964. The new plan is a funded plan with optional employe contribution. Funding the plan will be completed over ten or more years. Based on the most recent study by the Company's Actuarial Consultants, the past service liability under the revised plan amounted to approximately $7,800,000 on June 30, 1967.

The Company has sold 29 terminals under a sale and leaseback agreement. The lease covers a twenty-five year term at an aggregate annual rental of $378,000 for the first ten years and $428,000 thereafter.

Under the lease agreement, if the Company considers any parcel of leased property uneconomical or unsuitable for continued use and occupancy, it must make an offer to purchase the property at a price equal to the lessor's unrecovered cost.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Item (b)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year. (Increase in black, decrease in red) (d)
1		$	$	$
2	STOCK			
3	(528) Capital stock (p. 17) (b) Total book liability at close of year: 2 076 000; (b) Portion held by or for respondent at close of year: 76 812	1 999 188	1 999 188	-
4	(529) Premium on capital stock (b) Total book liability at close of year: NONE; (b) Portion held by or for respondent at close of year: NONE	NONE	NONE	-
5	Total stock liabilities (b) Total book liability at close of year: 2 076 000; (b) Portion held by or for respondent at close of year: 76 812	1 999 188	1 999 188	-
6	LONG-TERM DEBT			
7	(530) Funded debt unmatured (p. 21) (b) Total book liability at close of year: *55 749 283; (b) Portion held by or for respondent at close of year: NONE	62 972 855	55 749 283	(7 223 572)
8	CURRENT LIABILITIES			
9	(531) Loans and notes payable	NONE	NONE	-
10	(532) Traffic balances payable	1 176 462	717 337	(459 125)
11	(533) Audited accounts and wages unpaid	3 983 448	3 359 455	(623 993)
12	(534) Miscellaneous accounts payable	3 576 070	4 192 717	616 647
13	(535) Matured interest, dividends, and rents unpaid	15 594	NONE	(15 594)
14	(536) Matured funded debt unpaid	NONE	NONE	-
15	(537) Miscellaneous advances payable	4 948	4 5	(4 473)
16	(538) Unpaid money orders, checks, and drafts	NONE	NONE	-
17	(539) Express privilege liabilities	11 170 757	9 739 171	(1 431 586)
18	(540) Estimated tax liability	4 834 392	4 843 522	9 130
19	(541) Unmatured interest, dividends, and rents payable	478 146	451 139	(27 007)
20	(542) Other current liabilities	16 347 368	16 076 183	(271 185)
21	Total current liabilities	41 587 185	39 379 999	(2 207 186)
22	DEFERRED LIABILITIES			
23	(543) Liability on account of provident funds	NONE	NONE	-
24	(544) Liability on account of fidelity and indemnity funds	"	"	-
25	(545) Other deferred liabilities	92 054	1 416 662	1 324 608
26	Total deferred liabilities	92 054	1 416 662	1 324 608
27	UNADJUSTED CREDITS			
28	(546) Premium on funded debt	NONE	NONE	-
29	(547) Operating and insurance reserves (See Note 1)	4 732 021	5 228 435	496 414
30	(548) Accrued depreciation—Buildings and equipment (p. 25A)	81 837 474	86 699 990	4 862 516
31	(550) Accrued depreciation—Miscellaneous physical property	61 642	71 240	9 598
32	(551) Other unadjusted credits	51 280	94 973	43 693
33	Total unadjusted credits	86 682 417	92 094 638	5 412 221
34	CORPORATE SURPLUS			
35	(552) Additions to property through income and surplus	NONE	688 928	(5 813 181)
36	(553) Reserves from income and surplus	6 502 109	688 928	(5 813 181)
37	Total appropriated surplus	6 502 109	1 840 741	(12 207 151)
38	(554) Profit and loss balance (p. 25)	14 047 892	2 529 669	(18 020 332)
39	Total corporate surplus	20 550 001	193 169 439	(20 714 261)
40	GRAND TOTAL	213 883 700		

NOTE.–Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation . . . . . $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation. . $ 5 113 689

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit . . . . . $ NONE

Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1, 1968 . . . . . $4,026,880

* - Long Term Debt aggregating $55,749,283 includes installments of $6,213,987 which will be paid during the calendar year 1968.

NOTE 1: Operating and Insurance Reserves include $4,431,265 which it is expected will be paid during the calendar year 1968.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
1	I. Operating Income	$	$	$
2	(301) Charges for transportation (p. 29)	381 460 570		
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	86 233 103		
4	Revenue from transportation		295 227 467	
5	(302) Revenue from operations other than transportation (p. 29)		3 692 499	
6	Total operating revenues (p. 29)		298 919 966	
7	(315) Operating expenses (p. 40)		303 268 177	
8	Net operating revenue*		(4 348 211)	
9	(316) Uncollectible revenue from transportation		229 626	
10	(317) Express taxes (p. 43)		27 616 134	
11	Operating income*			(32 193 971)
12	II. Other Income			
13	(303) Rent from real property and equipment used jointly		299	
14	(304) Miscellaneous rent income		185 958	
15	(305) Net income from miscellaneous physical property (p. 23)		1 640	
16	(306) Separately operated properties—Profit (p. 29)		1 855	
17	(307) Dividend income (p. 35)		-	
18	(308) Income from funded securities (p. 35)		110 302	
19	(309) Income from unfunded securities and accounts		181 068	
20	(310) Income from sinking and other reserve funds		10 241	
21	(311) Release of premiums on funded debt		NONE	
22	(312) Contributions from other companies		"	
23	(313) Miscellaneous income (p. 41)		3 232 209	
24	Total other income		3 723 572	
25	Gross income*			(28 470 399)
26	III. Deductions From Gross Income			
27	(318) Rent for real property and equipment used jointly		NONE	
28	(319) Miscellaneous rents		148 324	
29	(320) Miscellaneous taxes		97	
30	(321) Net loss on miscellaneous physical property (p. 23)		NONE	
31	(322) Separately operated properties—Loss (p. 29)		"	
32	(323) Interest on funded debt (p. 21)		2 638 370	
33	(324) Interest on unfunded debt		113 884	
34	(325) Amortization of discount on funded debt		NONE	
35	(326) Income transferred to other companies		"	
36	(327) Miscellaneous income debits		129 786	
37	Total deductions from gross income		3 030 461	
38	Ordinary Net income*			(31 500 860)
39	IV. Extraordinary Items			
40	Profit from Sale of Subsidiary (See Page 46)	29 445 000		
41	Prior Years' Insurance Credit	1 986 109		
42	Total Extraordinary Income		31 431 109	
43	Write-Off of Undepreciated Cost of Minor Equipment	754 426		
44	Write-Off of Cosmic Expenses	640 665		
45	Vacation Reserve, Non-Union Employes	960 000	2 355 091	
46	Extraordinary Income			
	Income Balance Transferred to Profit and Loss *			29 076 018
				(2 424 842)

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . $ NONE

* If deficit, indicate in parenthesis.

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PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 25.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(401) Credit balance at beginning of year	x x x	1 840 741	
2	(402) Credit balance transferred from income	x x x	NONE	
3	(403) Profit on real property and equipment sold	x x x	245 256	
4	(404) Delayed income credits*	x x x	NONE	
5	(405) Unrefundable overcharges	x x x	360	
6	(406) Miscellaneous profit and loss credits*	x x x	2 044 348	
7	(407) Debit balance at beginning of year	NONE	x x x	
8	(408) Debit balance transferred from income	2 424 842	x x x	
9	(409) Surplus applied to sinking and other reserve funds	NONE	x x x	
10	(410) Dividend appropriations of surplus (p. 28)	"	x x x	
11	(411) Surplus set aside for investment in physical property	"	x x x	
12	(412) Stock discount extinguished through surplus	"	x x x	
13	(413) Debt discount extinguished through surplus	"	x x x	
14	(414) Miscellaneous appropriations of surplus	"	x x x	
15	(415) Loss on land sold	"	x x x	
16	(416) Delayed income debits*	NONE	x x x	
17	(417) Miscellaneous profit and loss debits*	293 101	x x x	
18	† Credit balance carried to Balance Sheet	1 412 762		
19	TOTAL	4 130 705	4 130 705	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

MISCELLANEOUS PROFIT AND LOSS CREDITS:

Reduction in Deferred Taxes	$1 898 245
Checks credited to Profit and Loss in current year	136 262
Prior Year Reserve Adjustments	6 867
Miscellaneous	2 974
Total	$2 044 348

MISCELLANEOUS PROFIT AND LOSS DEBITS

Fines imposed by U. S. Government	$ 9 902
Checks credited to Profit and Loss in prior years, paid in current year	16 528
Penalty for Delinquent Payment of Licenses and Taxes	7 344
Cost of Capital Stock issued to Trustees	41 333
Capital Stock for Management Consulting Services	100 000
Adjustment Due to Reconciliation of Cash	63 174
Prior Years Federal Income Tax Assessments	49 301
Miscellaneous	5 519
Total	$ 293 101

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent Regular (b)	Rate Percent Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge: Income (e)	Distribution of Charge: Profit and loss (f)	Date: Declared (g)	Date: Payable (h)
				$	$	$		
31								
32								
33								
34				NONE				
35								
36								
37								
38				TOTAL				

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INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues.

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties.

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties–Profit" or as "Separately Operated Properties–Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b) $			Remarks (c)
1	I. TRANSPORTATION				
2	(101) Express, domestic	380	638	624	
3	(102) Express, foreign		624	044	
4	(103) Miscellaneous		197	902	
5	Total transportation	381	460	570	
6	II. CONTRACT PAYMENTS				
7	(104) Express privileges—Dr.	86	233	103	
8	Revenue from transportation	295	227	467	
9	III. OPERATIONS OTHER THAN TRANSPORTATION				
10	(105) Customs brokerage fees	1	101	485	
11	(106) Order and commission		3	821	
12	(107) Rents of buildings and other property		161	619	
13	(108) Money orders		NONE		
14	(109) C. O. D. checks		744	974	
15	(110) Limited and unlimited cheques		NONE		
16	(111) Travelers cheques		"		
17	(112) Telegraph and cable transfers		"		
18	(113) Letters of credit		"		
19	(114) Foreign postal remittances		"		
20	(115) Profit on exchange and other financial revenue		"		
21	(116) Miscellaneous	1	680	600	
22	Total other than transportation	3	692	499	
23	Total operating revenues	298	919	966	

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c) $			Loss (d) $		
41	Railway Express Motor Transport,							
42	Incorporated	219 East 42nd Street, New York, N.Y.		1	615			
43								
44	Railway Express Agency,							
45	Incorporated, of California	219 East 42nd Street, New York, N.Y.			240			
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59		NET TOTAL		1	855			

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COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Item (b)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
		$	$	$
1	INVESTMENT	x x x	x x x	x x x
2		x x x	x x x	x x x
3	(501) Real property and equipment (p. 25) (b1) Total book assets at close of year $139 042 646 (b2) Respondent's own issues included in (b1) NONE	144 821 972	139 042 646	(5 779 326)
4	(502) Sinking funds (p. 37) NONE NONE	NONE	NONE	-
5	(503) Miscellaneous physical property (p. 23)	81 948	64 381	(17 567)
6	(504) Investments in affiliated companies—	x x x	x x x	x x x
7	(A) Stocks (pp. 30 and 34)	548 500	290 049	(258 451)
8	(B) Bonds (pp. 32 and 35)	NONE	NONE	-
9	(C) Notes	2 400 000	"	(2 400 000)
10	(D) Advances	NONE	"	-
11	(505) Other investments—	x x x	x x x	x x x
12	(A) Stocks (pp. 31 and 34)	NONE	NONE	-
13	(B) Bonds (pp. 33 and 35)	2 040	3 040	1 000
14	(C) Notes	NONE	455 744	455 744
15	(D) Advances	"	NONE	-
16	Total investment	147 854 460	139 855 860	(7 998 600)
17	CURRENT ASSETS	x x x	x x x	x x x
18	(506) Cash	6 077 331	1 399 035	(4 678 296)
19	(507) Special deposits	5 571	5 586	15
20	(508) Loans and notes receivable	1 555 813	7 206 206	5 650 393
21	(509) Traffic balances receivable	148 639	125 579	(23 060)
22	(510) Net balances receivable from agents and messengers	20 223 770	25 022 767	4 799 057
23	(511) Miscellaneous accounts receivable	9 961 382	5 506 320	(4 455 062)
24	(512) Material and supplies	1 029 855	1 188 912	159 057
25	(513) Interest, dividends, and rents receivable	36 860	52 212	15 352
26	(514) Working fund advances	9 685	7 750	(1 935)
27	(515) Other current assets	2 794 530	1 123 220	(1 671 310)
28	Total current assets	41 843 376	41 637 537	(205 769)
29	DEFERRED ASSETS	x x x	x x x	x x x
30		x x x	x x x	x x x
31	(516) Insurance and other reserve funds (p. 37) (b1) Total book assets at close of year 98 432 (b2) Respondent's own issues included in (b1) NONE	1 166 660	98 432	(1 068 228)
32	(517) Provident funds (p. 37) NONE "	NONE	NONE	-
33	(518) Fidelity and indemnity funds (p. 37) " "	"	"	-
34	(519) Advance payments on contracts		"	-
35	(520) Other deferred assets	58 870	50 340	(8 530)
36	Total deferred assets	1 225 530	148 772	(1 076 758)
37	UNADJUSTED DEBITS	x x x	x x x	x x x
38	(521) Rents and insurance premiums paid in advance	358 930	461 121	102 191
39	(522) Taxes paid in advance	591 474	509 941	(81 533)
40	(523) Discount on capital stock	NONE	NONE	-
41	(524) Discount on funded debt	"	"	-
42	(525) Other unadjusted debits Par value of holding at close of year	1 295 669	1 694 359	398 690
43	(526) Securities issued or assumed—Unpledged (pp. 17 and 21) 76 812	x x x	x x x	x x x
44	(527) Securities issued or assumed—Pledged (pp. 17 and 21) 2 549 149	x x x	x x x	x x x
45	Total unadjusted debits	2 246 073	2 665 421	419 348
46	GRAND TOTAL	193 169 439	184 307 540	(8 861 799)

( ) Decrease

1967

Supplementary Statement
of
Contingent Liabilities Not Included in the Body
of The Balance Sheet Statement

In July, 1963 the Board of Directors of the Company approved a new pension plan for noncontract supervisory employes to be effective on January 1, 1964. The new plan is a funded plan with optional employe contribution. Funding the plan will be completed over ten or more years. Based on the most recent study by the Company's Actuarial Consultants, the past service liability under the revised plan amounted to approximately $7,800,000 on June 30, 1968.

The Company has sold 29 terminals under a sale and leaseback agreement. The lease covers a twenty-five year term at an aggregate annual rental of $378,000 for the first ten years and $428,000 thereafter.

Under the lease agreement, if the Company considers any parcel of leased property uneconomical or unsuitable for continued use and occupancy, it must make an offer to purchase the property at a price equal to the lessor's unrecovered cost.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Balance at beginning of year (a)	Item (b)	(b) Total book liability at close of year	(b) Portion held by or for respondent at close of year	Balance at close of year (c)	Net change during year. (Increase in black, decrease in red) (d)
	$				$	$
1	x x x	STOCK			x x x	x x x
2	x x x				x x x	x x x
3	1 999 188	(528) Capital stock (p. 17)	2 255 000	76 812	2 179 188	180 000
4	NONE	(529) Premium on capital stock	NONE	NONE	NONE	-
5	1 999 188	Total stock liabilities	2 255 000	76 812	2 179 188	180 000
6	x x x	LONG-TERM DEBT			x x x	x x x
7	x x x				x x x	x x x
8	55 749 283	(530) Funded debt unmatured (p. 21)	46 615 137	2 549 149	*44 065 988	(11 683 295)
9	x x x	CURRENT LIABILITIES			x x x	x x x
10	NONE	(531) Loans and notes payable			NONE	-
11	717 337	(532) Traffic balances payable			103 310	(614 027)
12	3 359 455	(533) Audited accounts and wages unpaid			4 223 767	864 312
13	4 192 717	(534) Miscellaneous accounts payable			3 743 279	(449 438)
14	NONE	(535) Matured interest, dividends, and rents unpaid			NONE	-
15	"	(536) Matured funded debt unpaid			"	-
16	475	(537) Miscellaneous advances payable			475	-
17	NONE	(538) Unpaid money orders, checks, and drafts			NONE	-
18	9 739 171	(539) Express privilege liabilities			6 537 065	(3 202 106)
19	4 843 522	(540) Estimated tax liability			3 651 330	(1 192 192)
20	451 139	(541) Unmatured interest, dividends, and rents payable			415 200	(35 939)
21	16 076 183	(542) Other current liabilities			24 315 815	8 239 632
22	39 379 999	Total current liabilities			42 990 241	3 610 242
23	x x x	DEFERRED LIABILITIES			x x x	x x x
24	NONE	(543) Liability on account of provident funds			NONE	-
25	"	(544) Liability on account of fidelity and indemnity funds			"	-
26	1 416 662	(545) Other deferred liabilities			1 447 010	30 348
27	1 416 662	Total deferred liabilities			1 447 010	30 348
28	x x x	UNADJUSTED CREDITS			x x x	x x x
29	NONE	(546) Premium on funded debt			NONE	-
30	5 228 435	(547) Operating and insurance reserves			5 330 130	101 695
31	86 699 990	(548) Accrued depreciation—Buildings and equipment (p. 25A)			86 403 190	(296 800)
32	71 240	(550) Accrued depreciation—Miscellaneous physical property			67 490	(3 750)
33	94 973	(551) Other unadjusted credits			411 641	315 668
34	92 094 638	Total unadjusted credits			92 212 451	117 813
35	x x x	CORPORATE SURPLUS			x x x	x x x
36	NONE	(552) Additions to property through income and surplus			NONE	-
37	688 928	(553) Reserves from income and surplus			"	(688 928)
38	688 928	Total appropriated surplus			"	(688 928)
39	1 840 741	(554) Profit and loss balance (p. 28)			1 412 762	(427 979)
40	2 529 669	Total corporate surplus			1 412 762	(1 116 907)
41	193 169 439	GRAND TOTAL			184 307 640	(8 861 799)

NOTE.–Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation . . . . . $ NONE .

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . $ 5 113 689 .

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit . . . . . $ NONE .

Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1, 1969 . . . . . $19,000,000

* - Long Term Debt aggregating $44,065,988 includes installments of $4,189,840 which will be paid during the calendar year 1969.

INCOME ACCOUNT

Line No.	Item (a)	(b)	(c)	(d)
		$	$	$
1	I. OPERATING INCOME	x x x	x x x	x x x
2	(301) Charges for transportation (p. 29)	345 310 462	x x x	x x x
3	(314) Express privileges—Dr. (pp. 11, 12 and 13)	79 477 387	x x x	x x x
4	Revenue from transportation	x x x	265 633 075	x x x
5	(302) Revenue from operations other than transportation (p. 29)	x x x	3 004 943	x x x
6	Total operating revenues (p. 29)	x x x	269 638 018	x x x
7	(315) Operating expenses (p. 40)	x x x	265 651 688	x x x
8	Net operating revenue*	x x x	3 986 330	x x x
9	(316) Uncollectible revenue from transportation	x x x	1 523 877	x x x
10	(317) Express taxes (p. 43)	x x x	25 169 056	x x x
11	Operating income*	x x x	x x x	(22 706 603)
12	II. OTHER INCOME	x x x	x x x	x x x
13	(303) Rent from real property and equipment used jointly	x x x	49	x x x
14	(304) Miscellaneous rent income	x x x	87 286	x x x
15	(305) Net income from miscellaneous physical property (p. 23)	x x x	3 349	x x x
16	(306) Separately operated properties—Profit (p. 29)	x x x	-	x x x
17	(307) Divided income (p. 35)	x x x	-	x x x
18	(308) Income from funded securities (p. 35)	x x x	29 541	x x x
19	(309) Income from unfunded securities and accounts	x x x	300 548	x x x
20	(310) Income from sinking and other reserve funds	x x x	14 626	x x x
21	(311) Release of premiums on funded debt	x x x	-	x x x
22	(312) Contributions from other companies	x x x	-	x x x
23	(313) Miscellaneous income (p. 41)	x x x	1 145 890	x x x
24	Total other income	x x x	1 581 289	x x x
25	Gross income*	x x x	x x x	(21 125 314)
26	III. DEDUCTIONS FROM GROSS INCOME	x x x	x x x	x x x
27	(318) Rent for real property and equipment used jointly	x x x	-	x x x
28	(319) Miscellaneous rents	x x x	95 909	x x x
29	(320) Miscellaneous taxes	x x x	-	x x x
30	(321) Net loss on miscellaneous physical property (p. 23)	x x x	-	x x x
31	(322) Separately operated properties—Loss (p. 29)	x x x	-	x x x
32	(323) Interest on funded debt (p. 21)	x x x	2 223 062	x x x
33	(324) Interest on unfunded debt	x x x	3 020	x x x
34	(325) Amortization of discount on funded debt	x x x	-	x x x
35	(326) Income transferred to other companies	x x x	-	x x x
36	(327) Miscellaneous income debits	x x x	330 871	x x x
37	Total deductions from gross income	x x x	2 652 862	x x x
38	Net income*	x x x	x x x	(23 778 176)
39	IV. DISPOSITION OF NET INCOME	x x x	x x x	x x x
40	(328) Income applied to sinking and other reserve funds	x x x	NONE	x x x
41	(329) Dividend appropriations of income (p. 28)	x x x	"	x x x
42	(330) Income appropriations for investment in physical property	x x x	"	x x x
43	(331) Stock discount extinguished through income	x x x	"	x x x
44	(332) Miscellaneous appropriations of income	x x x	"	x x x
45	Total appropriations	x x x	"	x x x
46	Income balance transferred to Profit and Loss*	x x x	x x x	(23 778 176)

*If deficit, indicate in parenthesis.

NOTE.—Deductions because of accelerated amortization of emergency facilities in excess of recorded depreciation resulted in reduction of Federal income taxes for the year of this report in the amount of . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Net reduction or increase in charges to account 317, Express Taxes, due to provision for Federal income taxes during the current year and corresponding increase or decrease in net income because of accelerated depreciation of facilities under section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ NONE
If net effect is an increase of Federal income taxes, indicate by use of parenthesis.

Amount by which charges to account 317, Express Taxes, for payment of Federal income taxes during the current year were decreased and the reported net income correspondingly increased because of the investment tax credit authorized in the Revenue Act of 1962 compared with the amount that would otherwise have been payable without such investment tax credit . . . . . $ NONE

PROFIT AND LOSS ACCOUNT

Show hereunder the items of the Profit and Loss Account of the respondent for the year, classified in accordance with the Uniform System of Accounts for Express Companies.

The sum of the dividends stated in this account and those stated in the Income Account (p. 27) for any particular class of stock should equal the total amount of dividends declared on such class during the year as shown on page 28.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
1	(401) Credit balance at beginning of year	x x x	$ 1 412 762	
2	(402) Credit balance transferred from income	x x x	-	
3	(403) Profit on real property and equipment sold	x x x	28 502	
4	(404) Delayed income credits*	x x x	-	
5	(405) Unrefundable overcharges	x x x	-	
6	(406) Miscellaneous profit and loss credits*	x x x	20 680 069	(A)
7	(407) Debit balance at beginning of year	-	x x x	
8	(408) Debit balance transferred from income	$ 23 778 176	x x x	
9	(409) Surplus applied to sinking and other reserve funds	-	x x x	
10	(410) Dividend appropriations of surplus (p. 28)	-	x x x	
11	(411) Surplus set aside for investment in physical property	-	x x x	
12	(412) Stock discount extinguished through surplus	-	x x x	
13	(413) Debt discount extinguished through surplus	-	x x x	
14	(414) Miscellaneous appropriations of surplus	-	x x x	
15	(415) Loss on land sold	-	x x x	
16	(416) Delayed income debits*	-	x x x	
17	(417) Miscellaneous profit and loss debits*	1 523 779	(B) x x x	
18	† Debit balance carried to Balance Sheet	-	3 120 622	
19	Total	25 301 955	25 301 955	

*Details of principal items should be given. †State "Debit" or "Credit," as may be appropriate.

(A) ACCOUNT 406 - MISCELLANEOUS PROFIT AND LOSS CREDITS:

(1) Net Gain on sale of R E A Leasing Corporation 20% Equity to Integrated Container Service Industries Corporation, and sale of Integrated Container common shares to public, the latter acquired in exchange for an additional 13% Equity in R E A Leasing. (Refer to Page 46) $ 4 259 623

(2) Equity in undistributed profits of R E A Leasing Corporation to date of final disposal in June of 1969. (Refer to page 45) 9 886 885

(3) Equity in undistributed profits of Affiliated Companies (REXCO, INC. and its Subsidiaries) at December 31, 1969. 2 033 595

DIVIDENDS DECLARED DURING THE YEAR

Give particulars of each dividend declared during the year and charged to Income or to Profit and Loss. For nonpar stock, show the number of shares in column (d) and the rate per share in column (b) or (c). If any such dividend was payable in anything other than cash, explain the matter fully in a footnote. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote; if none has been incurred for such purpose, state that fact.

Line No.	Name of security on which dividend was declared (a)	Rate Percent Regular (b)	Rate Percent Extra (c)	Par value of amount on which dividend was declared (d)	Distribution of Charge Income (e)	Distribution of Charge Profit and loss (f)	Date Declared (g)	Date Payable (h)
31				$	$	$		
32								
33								
34			NONE					
35								
36								
37								
38								
39								
40								
41								
42	Total							

PROFIT AND LOSS ACCOUNT

ANALYSIS OF MISCELLANEOUS PROFIT AND LOSS DEBITS AND CREDITS

(A) ACCOUNT 406 - MISCELLANEOUS PROFIT AND LOSS CREDITS (CONTINUED):

(4) Net Gain on Sale of Leasehold Interest held at New York City Property - Eleventh Avenue and 42nd Street	$ 4 229 041
(5) Outstanding checks remaining unpaid one year from issue date	181 574
(6) Federal Income Taxes to be recovered from Affiliated Company	91 000
(7) All other items - net	(1 562)
TOTAL	$20 680 069

(B) ACCOUNT 417 - MISCELLANEOUS PROFIT AND LOSS DEBITS

(1) Adjustment for prior year underaccrual of Express Privilege Liabilities	$ 1 312 068
(2) Write-off of unreconciled variance in Cash Balances per Books in connection with fiscal year-end 1969 audit	180 481
(3) Penalties levied - U. S. Customs, Licenses and Taxes	11 575
(4) Amortization of deferred costs of Common Stock issued to Trustees under previous ownership structure	10 000
(5) All other - net	9 655
TOTAL	$ 1 523 779

INSTRUCTIONS FOR ANSWERING QUESTIONS ON THIS PAGE

Operating revenues

The returns in the upper table on this page should represent the Operating Revenues of the respondent classified in accordance with the instructions contained in the Uniform System of Accounts for Express Companies.

Separately operated properties

Under this heading should be entered amounts receivable or amounts payable under the terms of agreements or contracts, whereby the profit or the loss resulting from the separate operation of the property of other companies having an independent corporate existence is receivable or payable in whole or in part by the respondent. The "Net total" should be carried to the Income Account and entered as "Separately Operated Properties—Profit" or as "Separately Operated Properties—Loss" on page 27.

OPERATING REVENUES

Line No.	Account (a)	Amount of revenue for the year (b)	Remarks (c)
		$	
1	I. TRANSPORTATION	xxx xx xx	
2	(101) Express, domestic	344 853 309	
3	(102) Express, foreign	238 845	
4	(103) Miscellaneous	218 308	
5	Total transportation	345 310 462	
6	II. CONTRACT PAYMENTS	xxx xx xx	
7	(104) Express privileges—Dr.	79 477 387	
8	Revenue from transportation	265 833 075	
9	III. OPERATIONS OTHER THAN TRANSPORTATION	xxx xx xx	
10	(105) Customs brokerage fees	1 376 973	
11	(106) Order and commission	3 496	
12	(107) Rents of buildings and other property	120 236	
13	(108) Money orders	NONE	
14	(109) C.O.D. checks	630 503	
15	(110) Limited and unlimited cheques	NONE	
16	(111) Travelers cheques	"	
17	(112) Telegraph and cable transfers	"	
18	(113) Letters of credit	"	
19	(114) Foreign postal remittances	"	
20	(115) Profit on exchange and other financial revenue	1 673 735	
21	(116) Miscellaneous	3 804 943	
22	Total other than transportation	269 638 018	
23	Total operating revenues		

SEPARATELY OPERATED PROPERTIES

Line No.	Name of property (a)	Location (b)	Profit (c)	Loss (d)
			$	$
41	NONE			
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59	Net total			

COMPARATIVE GENERAL BALANCE SHEET—ASSET SIDE

Line No.	Item (b)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
		$	$	$
1	INVESTMENT	xxx	xxx	xxx
2		xxx	xxx	xxx
3	(501) Real property and equipment (p. 25)	139,042,646	128,441,260	(10,601,386)
4	(502) Sinking funds (p. 37)	NONE	NONE	-
5	(503) Miscellaneous physical property (p. 23)	64,381	89,480	25,099
6	(504) Investments in affiliated companies—	xxx	xxx	xxx
7	(A) Stocks (pp. 30 and 34)	290,049	45,003	(245,046)
8	(B) Bonds (pp. 32 and 35)	NONE	NONE	-
9	(C) Notes	NONE	NONE	-
10	(D) Equity in Retained Earnings		2,033,508	2,033,508
11	(505) Other investments—	xxx	xxx	xxx
12	(A) Stocks (pp. 31 and 34)	NONE	1,665,991	1,665,991 (A)
13	(B) Bonds (pp. 33 and 35)	3,040	NONE	(3,040) (A)
14	(C) Notes	455,744	589,713	133,969
15	(D) Advances	NONE	NONE	-
16	Total investment	139,855,860	132,864,761	(6,991,099)
17	CURRENT ASSETS	xxx	xxx	xxx
18	(506) Cash	1,399,035	502,460	(1,901,405)
19	(507) Special deposits	5,586	6,412	826
20	(508) Loans and notes receivable	7,206,206	41,014	(7,165,192)
21	(509) Traffic balances receivable (Net)	125,579	57,364	(68,215)
22	(510) Net balances receivable from agents and messengers	25,022,767	24,148,103	(874,664)
23	(511) Miscellaneous accounts receivable	5,506,320	3,216,780	(2,289,540)
24	(512) Material and supplies	1,188,912	786,961	(401,951)
25	(513) Interest, dividends, and rents receivable	52,212	9,454	(42,758)
26	(514) Working fund advances	7,750	11,450	3,700
27	(515) Other current assets	1,123,220	512,366	(610,854)
28	Total current assets	41,637,567	28,287,144	(13,350,423)
29	DEFERRED ASSETS	xxx	xxx	xxx
30	(b1) Total book assets at close of year / (b2) Respondent's own issues included in (b1)	xxx	xxx	xxx
31	(516) Insurance and other reserve funds (p. 37) — 54,907 / NONE	98,432	54,907	(43,525)
32	(517) Provident funds (p. 37)	NONE	NONE	-
33	(518) Fidelity and indemnity funds (p. 37)	NONE	NONE	-
34	(519) Advance payments on contracts	NONE	NONE	-
35	(520) Other deferred assets	50,340	NONE	(50,340)
36	Total deferred assets	148,772	54,907	(93,865)
37	UNADJUSTED DEBITS	xxx	xxx	xxx
38	(521) Rents and insurance premiums paid in advance	461,121	4,475,070	4,013,949
39	(522) Taxes paid in advance	509,941	602,262	92,321
40	(523) Discount on capital stock	NONE	NONE	-
41	(524) Discount on funded debt	NONE	NONE	-
42	(525) Other unadjusted debits	1,694,359	(7,304,569)	(8,998,928)
43	(526) Securities issued or assumed—Unpledged (pp. 17 and 21) — Par value of holding at close of year 2,584,289	xxx	xxx	xxx
44	(527) Securities issued or assumed—Pledged (pp. 17 and 21) — NONE	xxx	xxx	xxx
45	Total unadjusted debits	2,665,421	(2,227,237)	(4,892,658)
46	Grand total	184,307,540	158,979,875	(25,327,765)

* ( ) = Decrease

(A) Amount improperly classified previous year; Reclassified to category A - "Stocks" in current year.

BALANCE SHEET SUPPLEMENT

CONTINGENT LIABILITIES

December 31, 1969

(Not Reflected in Balance Sheet Liabilities Page 45)

(1) PENSION PLANS

(a) Supplemental Retirement Plan $3,440,000

This plan covers substantially all employees not represented by collective bargaining agreements. The amount shown represents the excess of the actuarially computed value of vested benefits over the amount in the pension fund as of January 1, 1969.

(b) Unfunded Retirement Plan $2,900,000

This older plan covers former employees. Although the company is not legally obligated to continue payments under the plan, the amount shown represents the estimated liability at June 30, 1969.

(2) SUIT FILED AGAINST COMPANY AS CO-DEFENDENT

This suit seeks damages or recession of sale to the public of 175,102 shares of Integrated Container Service Industries Corporation Common Stock, which were acquired by converting Preferred Stock (convertible to 1.5 shares common) received from Integrated Container for an additional 13% interest in R E A Leasing Corporation. (R E A Leasing Corporation was fully disposed of to Integrated Container by November 1, 1969.) The gain to Railway Express on sale of the Integrated Container common shares approximated $6,500,000. Counsel is of the opinion that the suit is without substantial merit.

(3) OBLIGATIONS UNDER LEASE AGREEMENTS $12,500,000 PER ANNUM (APPROXIMATE)

A major portion of the Company's leases of terminal facilities, offices and transportation equipment are for terms of three years or less.

COMPARATIVE BALANCE SHEET—LIABILITY SIDE

Line No.	Item (b)	Balance at beginning of year (a)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
1	STOCK			
2		(b1) Total book liability at close of year / (b2) Portion held by or for respondent at close of year		
3	(528) Capital stock (p. 17)	2 172 188 / 2 530 450 / 103 762	2 426 688	247 500
4	(529) Premium on capital stock	NONE / NONE / NONE	-	-
5	Total stock liabilities	2 172 188 / 2 530 450 / 103 762	2 426 688	247 500
6	LONG-TERM DEBT			
7		(b1) Total book liability at close of year / (b2) Portion held by or for respondent at close of year		
8	(530) Funded debt unmatured (p. 21)	44 065 935 / 42 240 209 / 2 464 527	39 764 682 (A)	(4 301 386)
9	CURRENT LIABILITIES			
10	(531) Loans and notes payable	NONE	NONE	-
11	(532) Traffic balances payable	103 310	287 198	183 888
12	(533) Audited accounts and wages unpaid	4 223 767	4 323 462	99 695
13	(534) Miscellaneous accounts payable	3 743 279	3 315 360	(427 919)
14	(535) Matured interest, dividends, and rents unpaid	NONE	NONE	-
15	(536) Matured funded debt unpaid	NONE	NONE	-
16	(537) Miscellaneous advances payable	475	25 475	25 000
17	(538) Unpaid money orders, checks, and drafts	NONE	NONE	-
18	(539) Express privilege liabilities	6 537 065	8 632 632	2 095 567
19	(540) Estimated tax liability	3 651 330	3 421 886	(229 444)
20	(541) Unmatured interest, dividends, and rents payable	415 200	410 281	(4 919)
21	(542) Other current liabilities	24 315 825	17 016 018	(7 299 797)
22	Total current liabilities	42 980 041	37 432 312	(5 557 929)
23	DEFERRED LIABILITIES			
24	(543) Liability on account of provident funds	NONE	NONE	-
25	(544) Liability on account of fidelity and indemnity funds	NONE	NONE	-
26	(545) Other deferred liabilities	1 447 010	681 784	(765 226)
27	Total deferred liabilities	1 447 010	681 784	(765 226)
28	UNADJUSTED CREDITS			
29	(546) Premium on funded debt	NONE	NONE	-
30	(547) Operating and insurance reserves	5 330 430	8 237 838	2 907 708
31	(548) Accrued depreciation—Buildings and equipment (p. 25A)	86 402 190	82 349 280	(4 053 910)
32	(550) Accrued depreciation—Miscellaneous physical property	67 490	87 795	20 305
33	(551) Other unadjusted credits	411 641	(8 879 882)	(9 291 523)
34	Total unadjusted credits	92 212 451	81 795 031	(10 417 420)
35	CORPORATE SURPLUS			
36	(552) Additions to property through income and surplus	NONE	NONE	
37	(553) Reserves from income and surplus	NONE	NONE	
38	Total appropriated surplus	NONE	NONE	
39	(554) Profit and loss balance (p. 28)	1 412 762	(3 120 622)	(4 533 384)
40	Total corporate surplus	1 412 762	(3 120 622)	(4 533 384)
41	Grand total	184 307 640	156 979 875	(25 327 765)

NOTE.—Estimated accumulated net income tax reduction realized since December 31, 1949 under section 168 (formerly section 124-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation . . . . . $ NONE

Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation . . . . . $ 5,113,689

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit . . . . . $ 129,516

Estimated amount of future earnings which can be realized before paying Federal Income Taxes because of unused and available net operating loss carryover on December 31, 1970 $16 000 000

(A) This amount includes installments of $4,747,895 which will be paid during calendar year 1970.

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1970

INCOME STATEMENT

300-OPERATING REVENUES

310	Domestic Express	$306 997 003
320	Foreign Express	(1 922)
330	Interline Express	1 965 151
340	Other Express	189 363
350	Other Revenue	4 087 891
	Total Operating Revenues	$313 237 486

500-OPERATING EXPENSES

510	Equipment Maintenance	$ 18 950 593
520	Transportation	164 241 638
530	Terminal	106 918 792
540	Operations	3 361 434
550	Marketing	7 991 046
560	Finance and Administration	16 678 704
570	Personnel	910 033
590	Executive	5 353 812
	Total Operating Expenses	$324 406 052
	Net Operating Revenue	$(11 168 566)

600-NONOPERATING INCOME

610	Noncarrier Income	$ 365 034
620	Interest Income	301 492
630	Dividend Income	-
640	Other Income	665 254
	Total Nonoperating Income	$ 1 331 780
	Total Income	$(9 836 786)

700-NONOPERATING EXPENSES

710	Interest Expense	$ 2 639 296
720	Debt Expense and Credit	-
730	Other Expenses	496 380
	Total Nonoperating Expenses	$ 3 135 676
	Ordinary Income Before Income Taxes	$(12 972 462)

800-INCOME TAXES ON ORDINARY INCOME

810	Income Taxes on Ordinary Income	$(140 223)
	Ordinary Income	$(12 832 239)

INCOME STATEMENT

900-EXTRAORDINARY AND PRIOR PERIOD ITEMS

910	Extraordinary Items (Net).....	$ 238 209 (A)
920	Prior Period Items (Net).....	(1 878 730)(B)
930	Income Taxes on Extraordinary and Prior Period Items.....	-
	Total Extraordinary and Prior Period Items.....	$(1 640 521)
	NET INCOME (OR LOSS).....	$(14 472 760)

900-EXTRAORDINARY AND PRIOR PERIOD ITEMS

(A) Account 910 - Extraordinary Items (Net)

(1) Net Gain on sale of Land and Building - Wooster Street, New York City Property	$ 230 566
(2) Equity in undistributed net earnings of Affiliated Companies (Rexco, Inc. and its subsidiaries) at December 31, 1970	136 684
(3) Penalties Levied - U.S. Customs, Licenses and Taxes	(14 731)
(4) Loss and Retirements of Land and Buildings	(116 167)
(5) All other Items - Net	1 857
Total	$ 238 209

(B) Account 920 - Prior Period Items (Net)

(1) Prior Year adjustment to reflect unit depreciation on Revenue Equipment	$(1 550 764)
(2) Prior Year adjustment to reflect unit depreciation on buildings	266 426
(3) Writeoff of over-the-road Franchise Costs	(795 650)
(4) Outstanding checks remaining unpaid one year from issue date	213 080
(5) Adjustment of Investment in Subsidiary Company - Fast Service Shipping Terminals, Inc.	(6 300)
(6) All other Items - Net	(5 522)
TOTAL	$(1 878 730)

Earned Surplus Account

Deficit January 1, 1970 (Page 45)	$(3 120 622)
Ordinary Income (Loss) (Page 27)	(12 832 239)
	(15 952 861)
Less: Account 910 - Extraordinary Items (Net)	238 209 (A)
	(15 714 652)
Add: Account 920 - Prior Period Items (Net)	(1 878 730)(B)
Deficit December 31, 1970 (Page 45)	$(17 593 382)

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COMPARATIVE GENERAL BALANCE SHEET - ASSET SIDE

100-ASSETS

110-Current Assets

Balance at Beginning of Year			Balance at Close of Year	Net Change During Year Increase (Decrease)
$ (484 598)	111	Cash	$ 625 972	$ 1 110 570
-	112	Temporary investments	4 300 000	4 300 000
186 014	113	Notes receivable	25 646	(160 368)
27 635 786	114	Accounts receivable	27 299 764	(336 022)
(845 423)	115	Reserve for uncollectible receivables	(2 000 000)	(1 154 577)
786 961	116	Material and supplies	731 636	(55 325)
5 418 348	117	Prepayments	2 044 695	(3 373 653)
312 176	118	Affiliate receivables	625 404	313 228
-	119	Other current assets	-	-
$33 009 264		Total current assets	$38 653 117	$ 643 853

120-Tangible Property

	121	Operating property	$119 316 804		
$46 091 780		Less: 122-Accumulated Depreciation.	77 711 363	$41 605 441	$(4 486 339)
	123	Non-operating property	90 087		
1 694		Less: 124-Accumulated Depreciation.	88 3[illegible]5	1 732	38
$46 093 474		Total tangible property		$41 607 173	$(4 486 301)

130-Permanent Investments

$ 2 033 508	131	Affiliate investments	$ 2 177 308	$ 143 800
2 110 654	132	Other investments	2 169 545	58 891
$ 4 144 162		Total permanent investments	$ 4 346 853	$ 202 691

140-Other Assets

	141	Intangible property	$ -		
$ -		Less: 142-Accumulated amortization.	-	$ -	$ -
(7 645 685)	143	Deferred charges		1 205 800	8 851 485
54 907	144	Special funds		418 490	363 583
$(7 590 778)		Total other assets		$ 1 624 290	$ 9 215 [illegible]
$75 656 122		TOTAL ASSETS		$81 231 433	$ 5 575 311

BALANCE SHEET SUPPLEMENT

CONTINGENT LIABILITIES

December 31, 1970

(Not Reflected in Balance Sheet Liabilities Page

(1) PENSION PLANS

(a) Supplemental Retirement Plan $3,250,000

This plan covers substantially all employees not represented by collective bargaining agreements. The amount shown represents the excess of the actuarially computed value of vested benefits over the amount in the pension fund as of January 1, 1970.

(b) Unfunded Retirement Plan $2,900,000

This older plan covers former employees. Although the company is not legally obligated to continue payments under the plan, the amount shown represents the estimated liability at June 28 1970.

(2) SUITS FILED AGAINST COMPANY AS CO-DEFENDANT

These suits seek damage or recission of sale to the public of 175,102 shares of Integrated Container Service Industries Corporation Common Stock, which were acquired by converting Preferred Stock (convertible to 1.5 shares common) received from Integrated Container for an additional 13% interest in REA Leasing Corporation. (REA Leasing Corporation was fully disposed of to Integrated Container by November 1, 1969.) The gain to Railway Express on sale of the Integrated Container common shares approximated $6,500,000. Counsel is of the opinion that it is not yet possible to ascertain whether there will ultimately be any liability imposed upon the defendants. Under the terms of the Underwriting Agreement for the sale, the Company is indemnified by the seller and underwriters against liability arising out of alleged untrue statements or omissions of material fact contained in the Registration Statement of Prospectus.

(3) OBLIGATIONS UNDER LEASE AGREEMENT $7,500,000 PER ANNUM (APPROXIMATE)

A major portion of the Company's leases of terminal facilities, offices and transportation equipment are for terms of three years or less.

COMPARATIVE GENERAL BALANCE SHEET - LIABILITY SIDE

200-LIABILITIES

210-Current Liabilities

Balance at Beginning of Year			Balance at Close of Year	Net Change During Year Increase (Decrease)
$ -	212	Dividends declared	$ -	$ -
-	213	Notes payable	5 000 000	5 000 000
7 227 047	214	Accounts payable	4 246 636	(2 980 411)
-	215	Income taxes accrued	-	-
4 008 485	216	Other taxes accrued	6 171 125	2 162 640
25 559 503	217	Accrued expenses	30 396 600	4 837 097
522 211	218	Affiliate payables	133 972	(388 239)
57 823	219	Other current liabilities	478 084	420 261
$37 375 069		Total current liabilities	$ 46 426 417	$ 9 051 348

220-Long-Term Obligations

$ 4 157 672	221	Equipment obligations	$ 6 609 334(A)	$ 2 451 662
-	222	Bonds	-	-
-	223	Other long-term obligations	-	-
$ 4 157 672		Total long-term obligations	$ 6 609 334	$ 2 451 662

230-Advances Payable

$ 340 000	231	Affiliate advances payable	$ 840 000	$ 500 000
35 324 262	232	Other advances payable	33 653 533(A)	(1 670 729)
$35 664 262		Total advances payable	$ 34 493 533	$(1 170 729)

240-Other Liabilities

$ 7 397 309	241	Reserves	$ 7 926 293	$ 528 984
(8 244 256)	242	Deferred credits	942 550	9 186 806
$(846 947)		Total other liabilities	$ 8 868 843	$ 9 715 790

250-Shareholders' Equity

$ -	251	Preferred stock	$ -	$ -
2 426 688	252	Common stock	2 426 688	-
-	253	Capital stock subscribed	-	-
-	254	Capital surplus	-	-
(3 120 622)	255	Earned surplus	(17 593 382)	(14 472 760)
$(693 934)		Total shareholders' equity	$(15 166 694)	$(14 472 760)
$75 656 122		TOTAL LIABILITIES	$ 81 231 433	$ 5 575 311

Note: Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation..... $ 5.113,689

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit... $ 129,518

Estimated amount of future earnings which can be realized before paying Federal Income Taxes because of unused and available net operating loss carryover on December 31,1970 $28.000.000

(A) This amount includes installments of $3,270,572 which will be paid during calendar year 1971.

1971

INCOME STATEMENT

300-OPERATING REVENUES

310	Domestic Express	$258 614 118
320	Foreign Express	-
330	Interline Express	1 726 918
340	Other Express	153 319
350	Other Revenue	2 910 384
	Total Operating Revenues	$263 404 739

500-OPERATING EXPENSES

510	Equipment Maintenance	$ 18 070 849
520	Transportation	136 374 057
530	Terminal	85 790 487
540	Operations	3 500 922
550	Marketing	9 171 299
560	Finance and Administration	13 473 089
570	Personnel	962 586
590	Executive	5 366 266
	Total Operating Expenses	$272 709 555
	Net Operating Revenue	$ (9 304 816)

600-NONOPERATING INCOME

610	Noncarrier Income	$ 262 198
620	Interest Income	251 843
630	Dividend Income	-
640	Other Income	1 253 778
	Total Nonoperating Income	$ 1 767 819
	Total Income	$ (7 536 997)

700-NONOPERATING EXPENSES

710	Interest Expense	$ 1 946 258
720	Debt Expense and Credit	-
730	Other Expenses	250 700
	Total Nonoperating Expenses	$ 2 196 958
	Ordinary Income Before Income Taxes	$ (9 733 955)

800-INCOME TAXES ON ORDINARY INCOME

810	Income Taxes on Ordinary Income	$ (42 559)
	Ordinary Income	$ (9 691 396)

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INCOME STATEMENT

900-EXTRAORDINARY AND PRIOR PERIOD ITEMS

910	Extraordinary Items (Net).....	$ -
920	Prior Period Items (Net).....	-
930	Income Taxes on Extraordinary and Prior Period Items.....	-
	Total Extraordinary and Prior Period Items.....	$ -
	NET INCOME (OR LOSS).....	$(9 691 396)

EARNED SURPLUS ACCOUNT

Deficit January 1, 1971 (Page 45)	$(17 593 382)
Add: 1971 Adjustments applicable to year 1970	(1 188 320)
Adjusted Deficit January 1, 1971	(18 781 702)
Net Income (Loss) (Page 28)	(9 691 396)
Deficit December 31, 1971 (Page 45)	$(28 473 098)

Net Income does not include Railroad Note Interest amounting to $1,020,238

COMPARATIVE GENERAL BALANCE SHEET - ASSET SIDE

100-ASSETS

110-Current Assets

Balance at Beginning of Year			Balance at Close of Year	Net Change During Year Increase (Decrease)
$ 625 972	111	Cash	$ 602 906	$(23 066)
4 300 000	112	Temporary investments	660 000	(3 640 000)
25 646	113	Notes receivable	64 076	38 430
27 299 764	114	Accounts receivable	21 806 692	(5 493 072)
(2 000 000)	115	Reserve for uncollectible receivables	(1 500 000)	500 000
731 636	116	Material and supplies	262 722	(468 914)
2 044 695	117	Prepayments	1 761 851	(282 844)
625 404	118	Affiliate receivables	857 025	231 621
-	119	Other current assets	-	-
$33 653 117		Total current assets	$24 515 272	$(9 137 845)

120-Tangible Property

	121	Operating property	$104 380 464		
$41 605 441		Less: 122-Accumulated Depreciation	69 995 166	$34 385 298	$(7 220 143)
	123	Non-operating property	9 200		
1 732		Less: 124-Accumulated Depreciation	3 707	5 493	3 761
$41 607 173		Total tangible property		$34 390 791	$(7 216 382)

130-Permanent Investments

$ 2 177 308	131	Affiliate investments	$ 1 885 472	$(291 836)
2 169 545	132	Other investments	2 087 749	(81 796)
$ 4 346 853		Total permanent investments	$ 3 973 221	$(373 632)

140-Other Assets

	141	Intangible property	$ -		
$ -		Less: 142-Accumulated Amortization.	-	$ -	$ -
1 205 800	143	Deferred charges		841 478	(364 322)
418 490	144	Special funds		3 905 970	3 487 480
$ 1 624 290		Total other assets		$ 4 747 448	$ 3 123 158
$81 231 433		TOTAL ASSETS		$67 626 732	$(13 604 701)

BALANCE SHEET SUPPLEMENT

CONTINGENT LIABILITIES

December 31, 1971

(Not Reflected in Balance Sheet Liabilities Page 45)

(1) PENSION PLANS

(a) Supplemental Retirement Plan $1,864,000

This plan covers substantially all employees not represented by collective bargaining agreements. The amount shown represents the excess of the actuarially computed value of vested benefits over the amount in the pension fund as of January 1, 1971.

(b) Unfunded Retirement Plan $2,900,000

This older plan covers former employees. Although the company is not legally obligated to continue payments under the plan, the amount shown represents the estimated liability at June 27, 1971.

(2) SUITS FILED AGAINST COMPANY AS CO-DEFENDENT

The suits pending against the Company as a co-defendent on December 31, 1970 filed by stockholders of Interway Corporation (formerly Integrated Container Service Industries, Inc.) were settled pursuant to an Agreement between the parties approved by the U. S. District Court on December 16, 1971. The Company is exempted from liability for any payments pursuant to such Agreement.

(3) OBLIGATIONS UNDER LEASE AGREEMENT $7,100,000 PER ANNUM (APPROXIMATE)

A major portion of the Company's leases of terminal facilities, offices and transportation equipment are for terms of three years or less.

* On September 30, 1971, REA Express filed a suit in the U. S. District Court for the Southern District of N.Y. contending inter alia that said notes amounting to $27,206,000 are null and void. A copy of REA's complaint on said suit is available upon request. Interest is not currently being paid on the notes. Accordingly, the Board of Directors, on December 21, 1971 directed that these notes be removed from "other obligations" and reflected in Stockholders' Equity. Interest at December 31, 1971, amounting to $1,020,238 is also removed from current liabilities - Accrued expenses and added to Stockholders' Equity - Earned Surplus.

COMPARATIVE GENERAL BALANCE SHEET - LIABILITY SIDE

200-LIABILITIES

210-Current Liabilities

Balance at Beginning of Year			Balance at Close of Year	Net Change During Year Increase (Decrease)
$ -	212	Dividends declared	$ -	$ -
5 000 000	213	Notes payable	5 000 000	-
4 246 636	214	Accounts payable	6 272 910	2 026 274
-	215	Income taxes accrued	-	-
6 171 125	216	Other taxes accrued	5 544 622	(626 503)
30 396 600	217	Accrued expenses	31 269 283	872 683
133 972	218	Affiliate payables	421 136	287 164
478 084	219	Other current liabilities	868 338	390 254
$ 46 426 417		Total current liabilities	$ 49 376 289	$ 2 949 872

220-Long-Term Obligations

$ 6 609 334(A)	221	Equipment obligations	$ 3 667 364(A)	$(2 941 970)
-	222	Bonds	-	-
-	223	Other long-term obligations	-	-
$ 6 609 334		Total long-term obligations	$ 3 667 364	$(2 941 970)

230-Advances Payable

$ 340 000	231	Affiliate advances payable	$ 840 000	$ -
33 653 533(A)	232	Other advances payable $33 026 376		
		Less Notes held by Railroads 27 206 376	5 820 000(A)	(27 833 533)
$ 34 493 533		Total advances payable	$ 6 660 000	$(27 833 533)

240-Other Liabilities

$ 7 926 293	241	Reserves	$ 5 586 324	$(2 339 969)
949 550	242	Deferred credits	1 187 209	244 659
$ 8 875 843		Total other liabilities	$ 6 773 533	$(2 095 310)

250-Shareholders' Equity

$ -	251	Preferred stock	$ -	$ -
2 426 688	252	Common stock	2 416 268	(10 420)
-	253	Capital stock subscribed	-	-
-	254	Capital surplus	-	-
(17 593 382)	255	Earned surplus	(28 473 098)	(10 879 716)
-		Adjustment for rail notes *	27 206 376	27 206 376
$(15 166 694)		Total Shareholders' equity	$ 1 149 546	$ 16 316 240
$ 81 231 433		TOTAL LIABILITIES	$ 67 626 732	$(13 604 701)

Note: Estimated accumulated net reduction in Federal income taxes because of accelerated depreciation of facilities since December 31, 1953 under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of the guideline lives since December 31, 1961 pursuant to Revenue Procedure 62-21 in excess of recorded depreciation ..... $ 5,113,689

Estimated accumulated net income tax reduction realized since December 31, 1961 because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit.. $ 129,518

Estimated amount of future earnings which can be realized before paying Federal Income Taxes because of unused and available net operating loss carryover on December 31, 1971 $38,700,000

(A) This amount includes installments of $1,935,171 which will be paid during calendar year 1972.

The Denver and Rio Grande Western Railroad Company

MANAGING COMMITTEE
120 BROADWAY
NEW YORK

Respondent Railroads
Exhibit No. 4

Public

August 1, 1928.

Dear Mr. Pyeatt:

We are enclosing herewith copy of memorandum prepared by Mr. Williams with reference to the financing under the proposed new express contract. We feel confident that, after reading same, you will concur in the view that the financial questions should be decided before the papers are signed and that the papers, as at present drafted, do not provide sufficient latitude to thoroughly meet the situation. Certainly they do not if:

First: Any financing is to be done at this time through channels other than the owning railroads.

Second: If Additions and Betterments are to be financed, particularly since no obligation is created on the part of the railroads to take any security from the Express Company or make any advance for Additions & Betterments.

Yours very truly,

L. W. Schumacher
Williams & Williams

Mr. J. S. Pyeatt,
President.

PROPOSED EXPRESS CONTRACT

FIRST: At the top of page 73 (proof of July 2, 1928) of "Report and Plan for Future Conduct of Express Business", provision is made that all interest charges in connection with any bonds presently issued or hereafter to be issued by the Express Company must be taken care of before any net earnings are distributed to the Railroads as rental for the use of their facilities (this, however, is exclusive of the obligation to pay the railroads 85% of the express revenue on car-load traffic).

During the twelve months ending December 31, 1925, the express revenues of the Class One Railroads of the United States aggregated $149,178,897; during the corresponding twelve months of 1927, the express revenues of the Class One Railroads aggregated $143,371,282. Therefore, insofar as a reasonable provision for taking care of the interest charges, or interest on any bonds likely to be issued at any time in the future, is concerned, there would appear to be no doubt. The margin would appear to be sufficiently safe to take care of anything likely to happen as result of the development of express by aeroplanes and motor busses, or as result of the further development of Parcel Post.

SECOND: Assuming the Railroads pay, say, $35,000,000 for the property of the Express Company, not over $15,000,000 to $20,000,000 of this - and possibly less - will represent fixed property which can be covered by a mortgage: in other words, horses, wagons, motor cars, and current assets, would not be included. It will be seen, therefore, that the fixed property would itself not form adequate collateral to justify the expectation of selling the bonds to the public as mortgage bonds. It might, therefore, be well to issue only a debenture bond, with other provisions to make the principal and interest secure. This would simplify future financing for Additions and Betterments.

THIRD: Another point raised with reference to financing is the date of maturity of any bonds which may be issued. It is evident the maturity could not be at a date later than the expiration date of the agreement with the railroads. It should be equally evident the date of maturity of the mortgage and the date of expiration of the contract could not be the same because at the time the contract expires the only thing back of the mortgage would be the fixed property, which would be less than the amount of bonds the plan indicates may be issued at this time, and, of course, less than what would be outstanding if additional bonds are issued for subsequent Additions and Betterments. It would seem absolutely necessary, in order to make the bonds salable to the public, to provide for a sinking fund sufficient to repay all bonds outstanding by the expiration date of the contract, as such sinking fund would have to be payable out of the earnings before distribution to the railroads, in the same manner in which interest would be payable. Such a provision would be better security to the bondholders than a mortgage as discussed under "Second" on property worth only a part of the amount of bonds outstanding.

FOURTH: While additional bonds may be issued in the future, the question arises as to how there would be financed Additions and Betterments for additional motor trucks, horses, wagons, etc., and all capital expenditures other than fixed property.

FIFTH: While the proposed mortgage states that, in connection with the acquisition of the property of the American Railway Express Company, bonds may be issued for all but about $30,000 of the purchase price and that the Railroads may be called upon to buy those bonds, the agreement is silent as to the character of bonds which the Railroads will be asked to buy and as to the date of their maturity. Not only does it seem desirable that the class of security to be issued shall be such as to be readily marketable, so that if it is so decided at this time, or at a later date, the Express Company will be in position to finance itself; but, if the Railroads take over any of the bonds, that such bonds will form good collateral in event any of the railroads find it necessary in their operations to borrow money from time to time. This applies not only to the present issue which the railroads are obligated to buy, but the question is of special importance in connection with capital expenditures during the life of the contract and which may amount to as much as the total initial investment of the railroads.

SIXTH: Another suggestion would be that the contract with the railroads be made for a forty-year period and that the contract contain a provision that the railroads may terminate the contract at the end of twenty years, but, if at the end of twenty years they cancel the contract, the railroads would have the obligation of paying off any Express Company bonds then outstanding. A forty-year maturity is suggested in order that the sinking fund required would not be as onerous as a twenty-year maturity would be.

Clearly, if the thought and purpose of the plan is that the railroadswill take a class of security which they will always hold, the simpler proposition would be to provide, at this time, for stock for the entire purchase price and for any subsequent capital expenditures -- and this is precisely what would happen as to the initial purchase price if the final understanding reached with the American Railway Express Company will result in the railroads taking over the capital stock of the Express Company instead of paying cash for the property of the Express Company and which latter plan would leave the capital stock and the charter of the Express Company outstanding. Inasmuch as the charter of the Express Company is a Federal charter, and it has some valuable rights, serious consideration should be given to this feature in order that the best arrangement may be made.

SEVENTH: It is my understanding no conclusion has been reached as to whether the railroads will buy the capital stock of the Express Company or whether the railroads will buy the property of the Express Company. The Committee should negotiate this part of the matter to a conclusion before proceeding to the next step, viz; the method of financing the purchase. The operating contract as finally determined upon will be the same in either event and it can be considered quite independently of the

SEVENTH: (con'td.) other question. Ought we not, therefore, to insist on the Committee telling us whether we are to buy the stock of the American Railway Express Company or whether the railroads are to buy its property? Will there be fixed mortgage bonds, debentures, income bonds, or what will the railroads be asked to take?

EIGHTH: The proposed contract contains no provision creating an obligation on the part of the railroads to take any security from the Express Company, or to make any advances, for Additions and Betterments. The only obligation created is to take care of interest charges incidental to such future Additions and Betterments. On the other hand, the contract provides that the net income of the Company over and above interest charges must be distributed to the railroads. The directors of the Express Company, therefore, would have no right to divert any of these earnings for capital purposes. How, then, do they contemplate financing such improvements, if they have not provided a security which they can sell to the banks and there is no obligation on the part of the railroads to provide any funds?

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This memorandum is prepared, not for the purpose of embarrassing those who have charge of negotiations but with the thought in mind of being helpful in working out the final solution.

September 14, 1928

Mr. W. B. Storey,
Chairman, Uniform Express Contract Comittee,
Association of Railway Executives
New York, N.Y.

Dear Sir:

In regard to the report and plan for future conduct of express business, transmitted with your letter July 15th:

In my letter December 26th, in which I stated this company would join in the organization of the proposed new Express Company, or participate in the acquisition of the capital stock of the American Railway Express Company, two conditions were made. The first of these, that companies handling not less than 75% of the gross express traffic agree to participate, seems to be contemplated in the plan, but careful consideration of the paragraph relating to the distribution of competitive traffic, as incorporated in the proposed operating agreement, leaving us in some doubt as to whether our company is protected in the division of this character of traffic between different railroads.

It is true Article XVIII of the proposed operating agreement, relating to the division of competitive traffic, is similarly worded to article of the same number in the present Uniform Amended Express contract. Such competitive traffic as we have participated in, since effective date of the Uniform Amended Express contract, which has not measured up to the volume we handled through the three years ended December 31st, 1917, has only been held to our line through a continual agitation on our part to prevent the diversion from us of a substantial portion of it. I, therefore, feel that in entering into a contract, which will extend for 26 years, it is highly important that the basis for division of competitive traffic be much less open to controversy. It may be the intention that each railroad continue to receive the same proportion of competitive traffic, which it has been receiving, but the indefinite wording of both the proposed and present agreements opens this matter to controversies, which we think ought to be avoided. We are therefore anxious that it be clarified before signing the new agreement, and propose the following wording for Article XVIII:

> "To insure and preserve a proper and equitable proportion of all competitive business to the Rail Company and to other carriers having similar agreements with the Express Company, the latter company agrees to divide the competitive traffic upon a fair and equitable basis between the said carriers, guaranteeing

to each carrier substantially the same percentage of competitive business moving to, from and between territory available to it as was handled by the same carrier in the same territory for the three-year period ended Decemb er 31, 1928, so long as the elements of service, direct routing, car supply and terminal facilities remain relatively the same between carriers as they were during the three years ended December 31, 1928. If at any time those elements of service, direct routing, car supply and terminal facilities are substantially changed as between railroads, due to consolidations, acts or decisions of the Interstate Commerce Commission, legislation, or other changes in conditions, consideration will then be given to a change in the percentage of competitive traffic to which the different carriers are entitled".

While Article XIV provides for method of settlement of controversies between the parties and refers to Article XVIII which sets out plan for the creation of committees A, B, C and D, to receive complaints and make recommendations to the Board of Directors on any controversies dealing with the several features of that article, it is apparently the plan to appoint these committees from the personnel of railroads and their findings would in reality, mean a review of their own recommendations or acts, which, I feel is wrong in principle, particularly committee A and would be unsatisfactory to all parties. It seems to me a more practical arrangement would be to appoint members of this committee who are in no way directly or indirectly connected with any railroad.

Although I appreciate that the general plan of financing cannot be specifically outlined at this time, I do feel the present proposals, even though indefinite, may be strengthened considerably. Any authorized issue of bonds should be large enough to provide for future additions and betterments, which do not appear to be adequately covered in the present plan. It also seems desirable that any class of security to be issued shall be readily marketable, so that if the railroads purchase these securities they will form good collateral in the event any of the railroads find it necessary in their operations to borrow money from time to time. With respect to bonds, the desirability of a sinking fund to amortize the issue during the life of the contract is suggested. It would also appear highly desirable, if possible for us to know in advance whether the property of the old express company will be purchased, or whether control will be acquired through purchase of its capital stock.

In paragraph 5 of agreement with Agents, the railroad assigns to the Agents all its rights under substituted Article XX of the present agreement, but it is nowhere stated that in return for this assignment the Agents are protecting the railroad as to its obligations under said article. Such protection would appear to be essential.

In the territory in which we operate it seems possible that substantial economics could be made at union depots by combining express and railroad employees in joint force. The American Railway Express Company has not seemed inclined to develop this saving in expense, and possibly it is not able to do so under present conditions. It seems desirable that the new operating contract should set out that wherever economics are possible, the new express agency will be fully authorized to co-operate with railroads and terminal companies to this end.

Another matter on which we feel that more clarification is desirable is the rights of carriers, who desire to be identified with the new express company, but whose revenues are not such as to entitle them to stock ownership. We have in mind particularly the Rio Grande Southern, one of our connections, which we are at present operating. If possible we would like to have the status of such companies set our more clearly in the agreements.

I note that in several places in the new operating agreement reference is made to provisions of the present Uniform Express Agreement. Possibly this is a brief was of covering the matter, but it occurs to me that it might be desirable to eliminate all reference to the old agreement, and let the new agreement cover in detail each phase of its activity without reference to expired contracts. This appears particularly desirable with respect to the provisions of Article 1 covering definition of what constitutes express business. The provisions of the old agreement are quite detailed, and specifically reserve the right to the railroads to handle, for example, silk, tea, newspapers, milk and cream on their own account. It would appear to us preferable that these detailed provisions be retained in the new agreement.

Under the provisions of Article 2, Section 4, of present agreement, the Express Company is compensating on a tonnage basis motor subsidiaries of rail companies, handling through express traffic for its account. The American Railway Express Company has felt that perhaps this section did not specifically authorize them to contract for this compensation, and it, therefore seems to be desirable to provide in the new agreement that

the rail company reserves the right to handle express for its own account on its motor subsidiaries, and that the express company may compensate such subsidiaries on an agreed basis for through express handled in connection with rail service.

I am making these suggestions in view of the fact that this is the first opportunity which we have had to review the detail of the proposed new agreement, and because of the importance of getting this new long term agreement on a satisfactory basis. I am especially desirous of correcting the unsatisfactory conditions, which have existed under the present agreement, and which were only made tolerable by the feeling that the present agreement was temporary. I would therefore, appreciate your advice that the changes suggested herein will be considered before it is necessary for the railroad companies to commit themselves definitely along the lines of the present proposals.

Yours very truly,

(Signed) J. S. PYEATT

cc Messrs. T. H. Schumacher
W. H. Williams
L. W. Baldwin
H. H. Adams

The Denver and Rio Grande Western Railroad Company

CHAIRMAN OF THE BOARD
120 BROADWAY

IAM H. WILLIAMS

Respondent Railroads
Exhibit No. 6

NEW YORK, N. Y. October 20, 1928.

Dear Mr. Pyeatt:

At a conference in my office on October 8th, with Messrs. Cary and Nicodemus representing the Legal Committee appointed by the Uniform Express Contract Committee of the Association of Railway Executives on March 5, 1928, which drafted the proposed express plan, contract, etc., they concurred in the views we submitted with reference to the manner of financing the proposed new company.

I asked them whether, if there be submitted to a court the question of adjusting unfair distribution of traffic which existed at the time of the execution of the contract, the court would not hold that the execution of the contract was prima facie evidence as to the parties agreeing on the fairness of the division of traffic as of the date the contract was signed, and that, therefore, the only change in the distribution which might be expected would be the result of changes arising after the contract was executed. It was their opinion any railroad could request, and would be entitled to, a consideration of the conditions existing prior to or at the execution of the contract, and that the court would so hold.

Subsequently I asked Mr. Winslow S. Pierce for an opinion and he did not concur in their view, but stated that the court's decision would be as indicated by my question.

If the company were to be financed in the first instance through an issue of bonds to be taken by the railroads, the latter would be entitled to interest on the outstanding bonds. If, however, these bonds be sold to outside parties, it is expected that the bonds will be retired during the life of the contract with the railroads through the operation of a sinking fund so that, in this way, there would be deducted from revenues properly belonging to the railroads an amount sufficient to retire the bonds. I asked them as to how the property would be divided in the event of dissolution, and they stated on a stock basis. I pointed out, however, that the bonds would be bought by the railroads on the basis that the express earnings of each railroad bear to the aggregate express revenues of all the railroads and, inasmuch as the railroads would be paying over 90% of the cost through the operation of the sinking fund, that the distribution should be on the basis of contributions to the sinking fund and not on the basis of stock ownership. I believe I convinced them of the equity of such distribution.

Yours very truly,

William H. Williams

Mr. J. S. Pyeatt,
President.

File 221-A

Respondent Railroads
Exhibit No. 7

WABASH RAILWAY COMPANY

OFFICE OF THE CHAIRMAN OF THE BOARD
120 BROADWAY

AM H. WILLIAMS

NEW YORK, N. Y. October 20, 1928.

Dear Mr. Taussig:

Confirming our conversation:

At a conference in my office on October 8th, with Messrs. Cary and Nicodemus representing the Legal Committee appointed by the Uniform Express Contract Committee of the Association of Railway Executives on March 5, 1928, which drafted the proposed express plan, contract, etc., they concurred in the views we submitted with reference to the manner of financing the proposed new company.

I asked them whether, if there be submitted to a court the question of adjusting unfair distribution of traffic which existed at the time of the execution of the contract, the court would not hold that the execution of the contract was prima facie evidence as to the parties agreeing on the fairness of the division of traffic as of the date the contract was signed, and that, therefore, the only change in the distribution which might be expected would be the result of changes arising after the contract was executed. It was their opinion any railroad could request, and would be entitled to, a consideration of the conditions existing prior to or at the execution of the contract, and that the court would so hold.

Subsequently I asked Mr. Winslow S. Pierce for an opinion and he did not concur in their view, but stated that the court's decision would be as indicated by my question.

If the Company were to be financed in the first instance through an issue of bonds to be taken by the railroads, the latter would be entitled to interest on the outstanding bonds. If, however, these bonds be sold to outside parties, it is expected that the bonds will be retired during the life of the contract with the railroads through the operation of a sinking fund so that, in this way, there would be deducted from revenues properly belonging to the railroads an amount sufficient to retire the bonds. I asked them as to how the property would be divided in the event of dissolution, and they stated on a stock basis. I pointed out, however, that the bonds would be bought by the railroads on the basis that the express earnings of each railroad bore to the aggregate express revenues of all the railroads and, inasmuch as the railroads would be paying over 90% of the cost through the operation of the sinking fund, that the distribution should be on the basis of contributions to the sinking fund and not on the basis of stock ownership. I believe I convinced them of the equity of such distribution.

Yours very truly,

(Signed) William H. Williams

Mr. J. E. Taussig,
President.

ASSOCIATION OF RAILWAY EXECUTIVES
UNIFORM EXPRESS CONTRACT AND PULLMAN SURCHARGE COMMITTEE
65 BROADWAY, NEW YORK CITY

STOREY, CHAIRMAN
ATTERBURY
CROWLEY
DE DONNELLY
R. GRAY
MARKHAM
PEARSON
M. ROBINSON

Respondent Railroads
Exhibit No. 8

December 3, 1928

Mr. J. E. Taussig, President
Wabash Railway Company
Railway Exchange Building
St. Louis, Mo.

Dear Mr. Taussig:

I have the Express Plan agreements executed by the Wabash Railway Company and the Ann Arbor Railroad Company, but accompanied in each instance by a letter from you making the execution of the agreement conditional upon the adoption by the Legal Committee of certain conclusions mentioned in the letter.

The Agents have no authority to regard as included in the plan any railroad company sending in an acceptance with a reservation. To make such qualified acceptance binding the consent to the same of all the other participating railroads would be required with the understanding that the reservation made should also apply to each of them. The plan must have uniform application as to all participants, or under its terms no participant would be bound. I am, therefore, returning to you herewith the agreements received.

In order that you may reconsider the situation I am glad to give you the views of the Legal Committee as reported to me by its Chairman, Mr. Cary, on the conclusions said in your letter to have been reached by it, which seem to satisfy your conditions.

Referring to your Paragraph First, all the members of the Committee are of the opinion that the provisions of Article XVIII of Exhibit D (Operating Agreement) do not preclude the Rail Company from claiming that the dis-

tribution of competitive traffic enjoyed by it during the three years ending December 31, 1928 is unjust and inequitable and from demanding a hearing according to the procedure provided for in the Article to show that it is entitled to a different and larger share of such traffic.

Referring to your Paragraph Second, all the members of the Committee are of the opinion that the provisions of Exhibit D (Operating Agreement) would not preclude the Board of Directors of the Railway Express Agency, Incorporated, from providing as between the participating railroads for proprietary interests by them in a sinking fund set up to protect a bond issue corresponding to their respective contributions thereto, and the Legal Committee has recommended that such action be so taken. In this respect it is the opinion of the Committee that while the Agents would have authority in agreeing upon terms for financing the acquisition of the express properties to provide for a sinking fund to protect a bond issue, the Board of Directors of the Railway Express Agency, Incorporated, must determine how such fund shall be raised.

In view of the foregoing explanation, I trust that you will return the agreements of your Companies with unconditional acceptances.

Very respectfully yours,

(Signed) W. B. STOREY

COPY

WABASH RAILWAY COMPANY

OFFICE OF THE PRESIDENT

RAILWAY EXCHANGE BUILDING

E. TAUSSIG

ST. LOUIS, MO.,

Respondent Railroads
Exhibit No. 9

December 20th, 1928.

Mr. W. B. Storey,
Chairman, Uniform Express Contract Committee,
65 Broadway,
New York, N.Y.

Dear Sir:

In accordance with your request, the Law Committee had a conference with the Chairman of our Board concerning certain changes we had suggested in the proposed Express set-up.

After full discussion, it was unanimously agreed that:

First: A change should be made in the financial set-up, and that the plan suggested by him was a proper one.

Second: Every road should have the right of review in connection with the fairness of the distribution of express business, insofar as it relates to itself, at the time the contract is entered into; otherwise, any present injustice would become perpetual.

Third: In the event of dissolution, instead of distributing the assets on a basis of stock ownership, the assets of the corporation should be distributed on the basis of cash contributed by each carrier in the purchase of capital stock of the new Express Company and in payments into the sinking fund of such Express Company.

All conceded it would be inequitable to distribute the assets on the basis of purchase of some $80,000. or $90,000. of capital stock, whereas the actual payments by the respective railroads would be on the basis of earnings after the contract became effective and for an amount well in excess of $35,000,000.

The Law Committee having conceded the fairness and equity and desirability of the above changes, I am surprised to learn from your letter to me of the 3rd inst., that no contract will be accepted, the execution of which is conditional upon the above changes.

Let us see the condition in which this places the Committee and the carriers: For example, let us assume a carrier is today getting only two-thirds of the traffic to which it is entitled. As I understand your view, the Committee might review this after the contract is executed. Our General Counsel, however, states that a Court would not go back of the terms of the contract itself, and that these terms make the proper basis of distribution such distribution as was in effect at the time the contract was executed. Clearly, the Committee would have no greater right than a Court, and were the Committee to undertake to make a change not in accordance with the contract, some other carriers which would be adversely affected

by the change could seek an injunction and might, possibly, undertake to force the Committee to make up any loss sustained by such carriers. Neither the Committee nor any carriers should be left in such a position.

Of about $35,000,000. which it is expected will be paid for the property of the Express Company at this time, only $90,000. will be represented by Capital Stock, and the balance will be represented by bonds which are to be retired during the twenty-five years' life of the agreement. It is contemplated that the money for retiring the bonds will be raised through annual payments into a sinking fund before making distribution to the carriers, and that the contributions to the sinking fund shall be on the basis of express earnings of the respective carriers. The Law Committee readily conceded that, under these conditions, the cash paid into the organization by the carriers, whether for stock or into sinking funds for the retirement of bonds, should be the basis for an equitable distribution of the assets in the event of dissolution.

In the absence of anything to the contrary in the set-up as executed by the carriers, Counsel admitted this distribution would have to be on the basis of stock ownership.

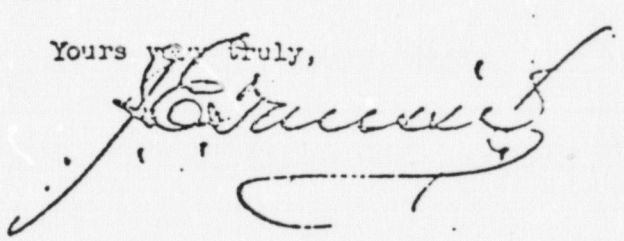
The other proposition related to financing. It is probable that the Committee has sufficient latitude in the first instance to raise money for the Express Company, but the contract is silent as to raising funds for the future needs of the Company, and, in view of the fact the financing is different than that offered by any other corporation, there should be no question as to raising funds needed for the future of the corporation.

I had assumed the Committee would welcome suggestions made in good faith and certainly, suggestions which had sufficient merit to secure the unanimous approval of your Law Committee.

Our General Counsel informs us that as to the distribution of assets and possible change in distribution of traffic, the interests of our Company can only be protected lawfully by the plan itself being changed or the roads agreeing to the execution of the contract with conditions, such as we have attempted to do. If, however, the Committee feel they have no option but to persist in the course outlined in your letter, you then force us to an action which we are reluctant to take, i.e., we must withhold our approval and must submit the matter for consideration by the Interstate Commerce Commission at the time the purchase of the Express Company property comes before the Commission for review. We certainly hope the Committee will find a way which will relieve us from the necessity of doing this. We are, at all times, most anxious to cooperate fully with our neighbors, but after all, we cannot escape the responsibility of fully protecting the interests we represent, and in this case, as stated above, the General Counsel informs us such protection cannot be secured through the contract as offered to us.

Will you kindly advise further?

Yours very truly,



cc-
Messrs. W. W. Atterbury,
P. E. Crowley,
Charles Donnelly,
L. A. Downs,
Carl R. Gray,
E. J. Pearson,
Bird M. Robinson,
Members - Uniform Express Contract Committee.

-COPY- 367

WABASH RAILWAY COMPANY
OFFICE OF THE GENERAL COUNSEL
55 WALL STREET

Respondent Railroads
Exhibit No. 10

Wilson S. Pierce
General Counsel
C. Nicodemus, Jr.
Assistant General Counsel

New York, December 31, 1928

William H. Williams, Esq.,
Chairman of the Board,
Wabash Railway Company,
120 Broadway,
New York City.

Dear Mr. Williams:

This will acknowledge receipt of your letter of December 18, 1928, with its enclosures, including draft of letter from Mr. Taussig to Mr. Storey, which letter I understand was forwarded by Mr. Taussig under date of December 20, 1928.

In compliance with your request, I have considered with Mr. Nicodemus whether the procedure outlined in Mr. Taussig's letter will fully protect the interests of the Wabash Railway Company.

Your suggestions respecting the financial structure of the new Express Company and the character of the Sinking Fund have, as I understand, been accepted by the Agents, whose counsel, in cooperation with Messrs. J. P. Morgan & Company and Kuhn, Loeb & Company are preparing a trust indenture to cover an authorized issue of bonds which the bankers believe will adequately provide for all present and future capital requirements of the new Express Company, the principal of the bonds to be protected by a Sinking Fund or by serial retirements in respect of which each of the Participating Railroads is to have an equity corresponding to its contribution. The complete financial plan is to be filed with the Commission early in January so that before any definite action on the part of Wabash Railway Company becomes necessary, you will be afforded an opportunity to determine whether it fully meets your views and I have no doubt that both Mr. Hannaur and Mr. Anderson

will be glad to have your views more in detail before making a definite recommendation to the Agents.

The embarrassing question relates to the provisions of the Operating Agreement respecting the distribution of competitive traffic.

As I explained, when this matter was discussed in our Board, I can see great strength in the claim that the Operating Agreement was intended to mould the situation at the outset on the basis of the three year test period specified therein which is the basis definitely accepted for the allotment of stock and the distribution of voting power among the Participating Railroads. At least, it cannot fairly be said that this possible claim is foreclosed by the language of the Operating Agreement and for this reason I have advised that steps be taken in advance of the execution of the Operating Agreement to safeguard Wabash Railway Company against such an interpretation of the Agreement.

Ordinarily, the contemporary written and oral communications of the parties to a written agreement are merged in the agreement itself and in case of controversy cannot be invoked. It is, however, an established doctrine of the law contracts that where language is ambiguous or open to two possible constructions, the ordinary rule does not apply and parol evidence is competent to show the true intent of the parties and it is in this aspect that the opinion of the Legal Committee, which Mr. Storey's Committee offers as an inducement to Wabash Railway Company to execute the Agreement, seems to me to give adequate protection provided, (a) that Wabash Railway Company accepts the opinion of the Legal Committee and executes the Operating Agreement upon the faith of it, and (b) that it is communicated in a formal way to the other Participating Railroads.

In my opinion, the proceeding before the Interstate Commerce Commission for the approval of the pooling features of the Operating Agreement may be thus utilized to commit the Agents and the Participating Railroads

to the interpretation of the Operating Agreement set forth in Mr. Storey's letter to Mr. Taussig of December 3, 1923, and I think that the intervention of the Wabash Company in the proceedings before the Commission should be directed to this end rather than to an effort to obtain changes in the Express Plan which already is effective between all of the Participating Railroads and cannot be altered without unanimous consent.

I do not believe that the Interstate Commerce Commission has jurisdiction to review any of the provisions of the Operating Agreement, except those relating to the pooling of earnings. It so held in acting upon the 1920 Express Contract, and I do not think it would reverse its position upon this important jurisdictional point for the purpose of aiding a single carrier or group of carriers to secure changes in the phraseology of the Agreement. The Commission would quite properly say that such matters should be settled by the parties themselves in conference. If Wabash Railway Company should ask the Commission to require changes in the provision of the Agreement relating to competitive traffic, it can only do so upon the theory that the opinion of the Legal Committee as to the intent of this provision of the Operating Agreement cannot be made effective to give protection against a different interpretation. Such a position would deprive Wabash Railway Company of all benefit of the opinion as an estoppel and would, in my judgement, materially weaken its present position.

I therefore advise against any attempt, (which I am sure would be unsuccessful), to secure changes in the Operating Agreement through action by the Commission and recommend that the following steps be taken by Wabash Railway Company if (as I assume will be the case), the Storey Committee again declines to accept a conditional delivery of the agreement:

First. That if and when an acceptable financial Plan is adopted by the Agents, Wabash Railway Company accept the Express Plan without condition

or reservation, advising the Storey Committee by its covering letter that it does so upon the faith of and in reliance upon the opinion of the Legal Committee set forth in Mr. Storey's letter to Mr. Taussig of December 3, 1928.

Second. That copies of Mr. Storey's letter and the Railway Company's covering letter be transmitted to all the Participating Railroads.

Third. That in the proceeding before the Interstate Commerce Commission, Wabash Railway Company intervene and file in connection with the Operating Agreement, the two letters above referred to as showing the intent and understanding of the parties respecting the distribution of competitive traffic.

If the foregoing steps are taken substantially as outlined I am satisfied that in any subsequent controversy the opinion of the Legal Committee would be held binding upon the Participating Railroads and that the position of the Railway Company will be fully protected.

I should, however, much prefer to have the Agents file the above mentioned letters with the Interstate Commerce Commission and themselves circulate the letters among the Participating Railroads. The Agents are the authorized representatives of the Participating Railroads in securing the approval of the Agreement by the Interstate Commerce Commission and any appropriate action which the Agents take to induce approval of the Agreement by the Commission is within the scope of their authority and binding upon the Railroads. It is quite possible that the Agents will be willing to do this and if you desire me to do so I shall be glad to take it up with Mr. Storey when he next comes to New York.

Very truly yours,

(signed) Winslow S. Pierce

General Counsel.

The Denver and Rio Grande Western Railroad Company

MANAGING COMMITTEE
120 BROADWAY
NEW YORK

January 9, 1929

Dear Mr. Pyeatt:

Respondent Railroads
Exhibit No. 11

Referring to the Express Contract:

We enclose copy of Mr. Pierce's letter to Mr. Williams dated December 31, 1928, regarding the Express Contract; also copy of Mr. Storey's letter to Mr. Taussig dated December 5, 1928.

At the suggestion of Mr. Storey, Mr. Williams had a conference in his office today with Mr. Cary, Chairman of the Legal Committee and, Mr. Lancaster, President of the Texas and Pacific, being in town was invited to sit in. When 'phoning Mr. Williams, Mr. Storey stated the Express Committee felt our third point with reference to distribution of assets was well taken, and he felt that Mr. Cary could make a suggestion which would bring us into accord.

You will recall we raised three points:

First: The financial plan. This matter has been fully discussed with representatives of Kuhn, Loeb & Company and J. P. Morgan & Company; all are in accord on the financing and our objections are fully met.

Second: The right of a road to ask for a change in distribution of traffic if such distribution was inequitable at the time the contract was entered into.

Third: The distribution of assets in event of liquidation.

As to the second objection, the Law Committee has already filed with the Express Committee an interpretation of this clause which, they believe, protects the right of any carrier to ask for a change in distribution if same be inequitable at this time.

At today's conference it was agreed that Mr. Cary would recommend to Mr. Storey he write a letter to all of the railroads interested in the Express Contract, stating that a number of roads had asked for an interpretation of the clause relating to distribution of traffic and also an interpretation as to the distribution of assets in event of liquidation, and that the interpretations of these two matters as made by the Law Committee were fully set forth in Mr. Storey's letter to Mr. Taussig dated December 5, 1928.

It was further agreed that there would be filed with the Interstate Commerce Commission before or at the time of the hearing, a copy of the interpretations by the Law Committee of these two matters, so that the approval of the Interstate Commerce Commission would be had

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

with such interpretations of the Contract. It is the view of Mr. Pierce this will protect the individual railroad companies.

Mr. Williams read to Mr. Cary, Mr. Pierce's letter of December 31, 1928, and is today forwarding Mr. Cary a copy of same. Mr. Williams understood it would be agreeable for us to comply with Mr. Pierce's suggestion we forward to Mr. Storey the executed contract with a confirming letter to the effect that the Company accepts the Express Plan without condition or reservation, and that it does so upon the faith of and in reliance upon the opinion of the Legal Committee set forth in Mr. Storey's letter to Mr. Taussig of December 3, 1928.

In view of the fact that Mr. Storey is to notify all the railroads of the Legal Committee's interpretations of the two points in question and is also to file such interpretations with the Interstate Commerce Commission prior to or at the time of the hearing, it will not be necessary for the Denver and Rio Grande Western to take any action with the Interstate Commerce Commission.

Yours very truly,

J. M. Schumacher Marion Williams

Mr. J. S. Pyeatt,
President.

Respondent Railroads
Exhibit No. 12

MEMORANDUM OF CONFERENCE WITH MR. MAHAFFIE,
DIRECTOR OF FINANCE, JANUARY 11, 1929—9:00 A.M.
MESSRS. NICODEMUS AND BELL.

[Text is in Attachment 15 to Eichner Verified Statement.]

(RR Ex 13)

On Line, Jan. 15, 1929.

Mr. W. B. Storey,
Chairman, Uniform Express Contract Comittee,
Chicago, Illinois.

Dear Mr. Storey:

I have executed and enclose herewith, in duplicate, agreement with Agents under the Plan For Future Conduct of Express Business.

We have stipulated none of the reservations heretofore referred to in our correspondence, having decided to accept and rely, in the future, upon the legal committee's expressed opinion that the provisions of Article 18 of Exhibit "D" (Operating Agreement) not only do not bar a railroad from a proper hearing of its claim - if made - that distribution of competitive traffic, based upon such traffic handled during three years ending December 31st, 1928, is unjust, but, on the contrary, leave that important question open for the consideration of any facts or information presented by any of the participating lines in support of such claim. Furthermore, that the provisions of Exhibit "D" (Operating Agreement) do not preclude the Board of Directors of the Railway Express Agency, Inc. from providing, as between the participating carriers, for proprietary interest by them in sinking fund set up to protect a bond issue corresponding to their respective contributions thereto.

Yours very truly,

(Signed) J.S. PYEATT.

cc: Messrs: W. W. Atterbury,
P. Crowley,
Chas. Donnelly,
L.A. Downs,
Carl R. Gray,
Bird M. Robinson,
B.C. Buckland.

L. W. Baldwin,
H. M. Adams

ASSOCIATION OF RAILWAY EXECUTIVES
UNIFORM EXPRESS CONTRACT AND PULLMAN SURCHARGE COMMITTEE
65 BROADWAY, NEW YORK CITY

B. STOREY, CHAIRMAN
W. ATTERBURY
E. CROWLEY
ARLES DONNELLY
A. DOWNS
RL R. GRAY
J. PEARSON
RD M. ROBINSON

Respondent Railroads
Exhibit No. 14

January 23, 1929

Mr. J. S. Pyeatt, President
Denver & Rio Grande Western Railroad Company
Equitable Building
Denver, Colorado

Dear Sir:

Referring to the "Report and Plan For Future Conduct of Express Business":

A number of the participating railroad companies have made inquiry as to the interpretation to be placed upon the language of Article XVIII of the Operating Agreement (Exhibit "D") covering the matter of the distribution of competitive traffic among the railroad companies, parties to the Operating Agreement, and also as to the distribution of the assets of the new express company in event of liquidation, and have asked that the Legal Committee express its views on such subjects and that the same be distributed among the participating railroad companies.

To comply with this request I enclose herewith a copy of my letter of December 3, 1928 to Mr. J. E. Taussig, President of the Wabash Railway Company, which is being mailed to the President of each participating Railroad Company together with a copy of this letter.

Very respectfully yours,

W. A. Thorn
J. V.

Respondent Railroads
Exhibit No. 124

RAILWAY EXPRESS AGENCY, INCORPORATED

TO

GUARANTY TRUST COMPANY OF NEW YORK,
Trustee.

Indenture

Dated, March 1, 1929.

SERIAL GOLD BONDS
AUTHORIZED ISSUE—$50,000,000.

SECTION 8. At all times, the Company will keep and maintain in good order and condition, reasonable wear and tear excepted, all equipment and other physical properties employed by it in the express transportation business and will at all times maintain depreciation reserves which shall be sufficient to cover all losses incident to the expiring service life or obsolescence of the units of equipment and other physical properties employed in the express transportation business and will from time to time, through charges to Operating Expenses or other appropriate accounts prescribed by the Interstate Commerce Commission or other Federal Commission having like powers, restore to Capital Account the amount of any capital losses incurred in the sale of physical property or otherwise, to the end that the value of its capital assets shall be maintained at a level which shall at all times at least equal the value of such capital assets of the date hereof.

SECTION 9. The Company will not, so long as any of the Bonds are outstanding, create or incur any indebtedness (other than current operating indebtedness) which, together with the principal amount of Bonds then outstanding hereunder, will exceed $30,000,000, unless such indebtedness is expressly subordinated to all Bonds issued or to be issued hereunder. All indebtedness of the Company to the Participating Railroads shall be expressly subordinated to all Bonds issued or to be issued hereunder.

SECTION 10. The Company will, so long as any of the Bonds are outstanding, faithfully perform all obligations to be performed by it under the Operating Agreements,

and each of them, and will not suffer or permit any default thereunder by reason whereof the Operating Agreements or any of them might be terminated.

The Company will not, so long as any of the Bonds are outstanding, permit any termination or modification of the Operating Agreements, or any thereof, without the written consent of the Trustee.

The Trustee shall give consent to any modification of the Operating Agreements or any thereof which makes no changes therein other than an extension of the time during which such agreements remain in force or an extension of the rights of the Company thereunder. The Trustee may give consent to any other modification which in its judgment does not adversely affect the interests of the holders of the Bonds. In determining whether any proposed modification adversely affects the interests of the holders of the Bonds the Trustee may act on the advice of any bankers doing business in the City of New York, conversant with the business of the Company. The Trustee shall incur no liability for any action taken by it in good faith pursuant to this Section 10.

SECTION 11. So long as any of the Bonds are outstanding, the Company will set aside out of its net receipts for each six months period ending June 30 or December 31, as a sinking fund for the Bonds, an amount equal to the principal amount of Bonds which, by their terms or otherwise, are due and payable in such six months period, and will apply the amount so set aside to the payment of the Bonds so due and payable. The term "net receipts" shall, for the purposes of this Section 11, be deemed to mean "Rail Transportation Rev-

enue" determined as provided in Section 4 of Article V of the Operating Agreements but without deduction for interest or sinking fund on any indebtedness subordinated to the Bonds pursuant to the provisions hereof.

SECTION 12. The Company will not obtain the authentication and delivery of any of the Bonds in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained, and with the requirements of law and after due authorization in accordance with law, nor will it negotiate, sell or dispose of any Bonds, save in accordance with the requirements of law and after due authorization in accordance with law, and in issuing, selling and otherwise disposing of the Bonds from time to time the Company will well and truly apply, or cause to be applied, the same or the proceeds thereof to and for the purposes for which it shall have been authorized in accordance with the law to apply the same, and to or for no other or different purpose.

ARTICLE FIFTH.

SECTION 1. No coupon appertaining to any Bond which in any way, at or after maturity, shall have been transferred or pledged separate and apart from the Bond to which it shall have been appurtenant shall, unless accompanied by such Bond, be entitled, in case of a default hereunder, to any benefit or security of or from this indenture except subject to the prior payment in full of the principal of all the Bonds and of all coupons not so transferred

Respondent Railroads
Exhibit No. 26

Minutes of the Meetings of the Board of Directors of Railway Express Agency, Inc.

Volume A

Pp. 98, 99

MINUTES OF BOARD OF DIRECTORS, in applicable part

February 28, 1929

RESOLVED that the second resolution under the title of "Contract with American Express Company" adopted by this Board at its meeting on February 18, 1929, electing to terminate, upon its assignment to this Company, the socalled money order contract between the American Express Company and the American Railway Express Company and directing certain officers to give notice on March 1, 1929, of such election to terminate effective six months from March 1, 1929, be and the same is hereby rescinded; and

RESOLVED that the said money order contract be and is hereby referred to the President with instructions to negotiate a new contract with the American Express Company, to be submitted to this Board for its approval, and with authority to serve notice of termination thereof if he is not able to negotiate a new contract upon terms deemed by him satisfactory.

PROVISION FOR MATURITIES
OF 5% SERIAL GOLD BONDS, SERIES A.

Henry W. Clark stated that he was prepared to move the adoption of a resolution determining the method of providing for the payment of the 5% Serial Gold Bonds, Series A, as the same mature semiannually. He called attention to the facts that objection had been made on the part of certain roads to the Plan for Future Conduct of Express Business in that it had no provision for

vesting in the railroad companies contributing to any sinking fund a property interest proportionate to their sinking fund contributions, and that the Legal Committee had ruled that such provision could be made under the Plan and had agreed to recommend to the Board of Directors of this Company when constituted that such provision be made. Form of resolution was submitted by Mr. Clark and read. Discussion developed a sentiment that this action ought to be taken by the Board of Directors to be elected at the annual stockholders meeting rather than by the present Board. Thereupon with the concurrence of all the members of said Legal Committee, all of whom are members of this Board and present at the meeting, said resolution was submitted and ordered spread on the minutes of this meeting, as the recommendation of the Legal Committee. The resolution was as follows:

"RESOLVED that each instalment of principal of the Company's 5% Serial Gold Bonds, Series A, maturing semi-annually, in the amount of $800,000 each, be deducted from the share of Rail Transportation Revenue payable to each stockholder for the months of January and July in each year, and be credited to such stockholders as money advanced to this Company, both such deduction and such credit to be at the rate of $800 per share of the capital stock of this Company held by said stockholders, respectively; that this Company pay or credit interest upon such advances, semi-annually, from the date of each maturity of principal of said bonds to which said deductions are applied, at the rate of 6 per centum per annum; and that the indebtedness of this Company represented by said advances and interest be subordinated to all bonds issued or to be issued under the indenture of March 1, 1929, to the Guaranty Trust Company of New York as

Future demand of Railroad Executives that there be provision for

Respondent Railroads
Exhibit No. 30

January 27, 1930

MEMORANDUM FOR MR. CHARSKE

Railway Express Agency:

Referring to the specification in the Operating Agreement, Article V Section 4, of certain profit and loss debits as items of deduction in the accounting of the Agency with the contract railroads, namely: "Surplus applied to sinking and other reserve funds", "Surplus set aside for investment in physical property" and "Miscellaneous appropriations of surplus":

I think that effect must be given to this specification as a recognition of a right in the Agency to make such appropriations and deduct them in determining the amount of "Rail Transportation Revenue" distributable to the contract railroads.

The prior contracts with the American Railway Express Company did not include any such deductions. In those contracts the deductions from express operations revenues were limited to operating expenses and other costs of conducting the express operations as distinguished from expenditures or appropriations for capital purposes. The addition of these appropriations in the specification of deductions in the operating agreement of the Agency was therefore deliberate and most strongly evidences an intent to change the basis of distribution among the contract railroads. Section 4 of Article V lists revenues, income and profit under

four headings. It then provides that from the total of these items "shall be deducted" the charges and items of expense thereafter enumerated under six headings. There is no provision in the operating agreement that the entire net income from operations is to be distributed to the contract railroads. On the contrary, the provision is that the "balance remaining" after all the specified classes of deductions shall be designated as "rail transportation revenue" and distributed among the contract railroads. It seems to me impossible to ignore the specification of these debits among the deductions. Ordinary rules of interpretation require that the specification be accorded some effect, and I think of no way in which effect can be given the expression except by treating it as a recognition of a right in the agency to make deductions of this character. I was a member of the Law Committee which prepared the operating agreement as a part of the whole Express Plan. I do not, however, advance the conclusion as above stated as representing the views of that Committee. It is almost two years since that drafting work was done and I would hesitate to attempt to quote the views of the various members of the committee expressed in the discussion of this amendment of the former contract. Any how what the Law Committee may have intended or thought it was accomplishing seems to be immaterial, if as I think, the necessary effect of the provision incorporated in the operating agreement is to confer a right to make such deductions. In the third place, it was understood that the acquisition

The most substantial argument against such right would seem to be

based on the doubt whether it could have been intended to give the agency a discretionary right to withhold appropriations for capital purposes from the net income distributed to the contract railroads, especially where, as in this case, a large number of the contract railroads would have no proprietary interest in the reserves or surplus so appropriated. But the facts of the situation which were well known at the time the Plan was prepared minimize the importance of any such doubt. In the first place, the interest in the express business of the nonparticipating railroads, consisting chiefly of the socalled short lines, is insignificant, aggregating for several hundred such carriers only about 2 per cent of the express business transacted. In the second place, when the Express Plan was drafted, the ultimate relation of the short lines to the business was not definitely settled; the Plan as submitted by the Law Committee to the Storey Committee contemplated that the nonparticipating railroads would be required to bear the cost of purchasing the properties of the American Railway Express Company local to their lines. If they had been required to bear this cost it would have been entirely consistent that they be required to share in the cost of future additions to property account through deductions from income. The final determination to relieve the nonparticipating railroads of all share in the original cost was embodied in the Agents' circular to the Short Lines, dated December 26, 1928, many months after the drafting of the Plan. In the third place, it was understood that the acquisition

of additional property and any other appropriations for capital purposes, over and above the amount of the depreciation reserve, would be so small an aggregate in comparison with the huge amount of the net income of the express business that it might well be considered negligible. For these reasons, I think that it may fairly be concluded that any question raised during the drafting of the operating agreement as to the propriety of discretionary appropriations of income might well have been dismissed as unimportant.

I do not, however, recommend that the agency exercise this right of deduction in the case of appropriations for capital purposes. Since it was finally decided not to require the short lines to bear any part of the cost of the acquisition of the American Railway Express Company properties, it would be inconsistent to make them share in future capital items. It is illogical to require contributions from the short lines through income deductions for which they would not receive in return any interest in the surplus. This latter objection could, to be sure, be obviated by giving the short lines notes or an open account credit for the amount of such deductions, but the large number of accounts involved in that arrangement would make it amount to an intolerable nuisance. There would be some inconsistency also, as to the stockholding railroads, in making such deductions from income, in the proprotion of the express business done by them, while their interest in the resulting surplus would be in the proportion of their stockholdings. This last objection of inconsistency was raised by Mr. W. H. Williams after the Express Plan had been adopted by the requisite

number of roads and had been declared effective. He urged that in the event of sinking fund applications of income, there should be secured to the contributing carriers a proprietary interest in such sinking fund proportionate to their respective contributions thereto. The Law Committee ruled that this could be accomplished under the Plan without amendment and recommended that such action be taken by the board of directors when constituted. The assent of Mr. Williams to the Plan was induced by this ruling and recommendation. The board of directors of the agency subsequently took action providing for the payment of bond maturities which, while not in just the form suggested by Mr. Williams, observed the principle of his criticism. The same reasons dictate the observance of a similar principle in future acquisitions of property and other appropriations for capital purposes.

E. W. Clark

C10-K

RAILWAY EXPRESS AGENCY

INCORPORATED

GENERAL ACCOUNTING DEPARTMENT

65 BROADWAY, NEW YORK

Respondent Railroads Exhibit No. 31

February 5, 1930.

CHARLES A. LUTZ,
VICE-PRESIDENT

IN REPLY PLEASE REFER TO

FILE NO.

TO CHIEF ACCOUNTING OFFICERS OF RAILROAD COMPANIES WHICH ARE STOCKHOLDERS IN RAILWAY EXPRESS AGENCY, INCORPORATED:

The question of financing the capital expenditures of the Agency, in excess of depreciation and retirements charges, necessarily incurred and to be incurred to give adequate service to its patrons and obviate excessive charges to Operating Expenses for repairing and overhauling and generally to put its operations upon a more economical and efficient basis has been given consideration by a finance committee of the Board of Directors appointed for that purpose and a report with recommendations was presented to and approved by the Board at its meeting on January 28, 1930. An extract from the minutes of the Board showing the report of the committee and the action thereon is attached to this letter.

In order to obtain the advances contemplated by the Board's action, there will be deducted from the share of Rail Transportation Revenue (Express Privileges) payable in February, 1930 to each railroad holding stock in the Railway Express Agency, Inc., the sum of $800 for each share of such stock held by each such railroad. In like manner there will be deducted in succeeding months varying sums necessary to provide for like capital expenditures in the months immediately preceding. In the event the Express Privileges payable to any railroad in any such month shall be insufficient to enable such deduction to be made, the Agency will withhold payment of such Express Privileges and render a Bill Collectible for the balance.

The amounts of the advances will be entered on the books of Railway Express Agency, Inc., in an account styled "Non-negotiable debt to affiliated companies - Advances" and will bear interest from the first of the next calendar month after such advances shall have been made, at the rate of 6% per annum, payable semi-annually on March 1 and September 1 of each year. Sums received after the first of such month in payment of Bills Collectible will bear like interest from the dates received.

It is assumed that you will make corresponding entries on the books of your Company charging the amount of these advances to the Balance Sheet account appropriate therefor.

Your attention is drawn to the fact that the report approved by the Board provides for a change effective January 1, 1930, in the rate of interest to be paid by the Agency on amounts advanced and to be advanced by the stockholding railroads under provisions of the Board's resolution of April 11, 1929, a copy of which was sent you with my circular letter of June 18, 1929. Accordingly, the rate of interest to be paid on such advances will be changed from 5½% to 6% per annum effective January 1, 1930. Checks for interest due March 1, 1930, and thereafter on such advances will reflect this change in the rate.

Yours very truly,

Vice President.

RAILWAY EXPRESS AGENCY, INCORPORATED

65 Broadway, New York

I, E. R. Merry, Jr., Secretary of Railway Express Agency, Incorporated, do hereby certify that the following is a true and complete extract from minutes of regular meeting of the Board of Directors of Railway Express Agency, Incorporated, held January 28, 1930, at which a quorum was present and voted:

"REPORT OF FINANCE COMMITTEE ON FINANCING EXPENDITURES FOR PROPERTY

"The Finance Committee submitted the following report:

"Mr. Lutz, Vice President, Accounting, advises that the expenditures for property to December 31, 1929, exceeded the amount realized from depreciation and retirements charges to operating expenses by approximately - - - - - - - - - - - - - - - - $ 536,000.
and that the carry-over from last year's budget is approximately - 1,250,000.
This year's budget is approximately - - - - - - - - - - - - - - - - 6,000,000.

T O T A L - - - $7,786,000.

It is estimated that there will be realized from depreciation and retirements charges to operating expenses this year approximately - 4,000,000.

Balance, to be financed - $3,786,000.

We recommend:

(1) that the Agency's working fund be reimbursed immediately for the - $536,000.
expended last year and for the expenditures this month in excess of the amount that will be realized from depreciation and retirements charges to operating expenses, estimated at - 270,000.

T O T A L - - - $806,000.

and that the working fund be reimbursed from month to month hereafter for expenditures made in excess of the depreciation and retirements charges to operating expenses.

(2) that this money be borrowed from the stockholding railroads, allowing them an interest rate of not less than 6%, collection from the stockholding railroads to be made by deduction from the share of RAIL TRANSPORTATION REVENUE payable to each under Section 4 of ARTICLE V of the Operating Agreement; $600,000., or $600. per share of stock to be collected in February, and the nearest amount in even thousands of dollars to the amount expended for property in excess of the depreciation and retirements charges during February and each month thereafter, to be collected in the following month.

We are of the opinion that there should be charged into the operations of the Agency at least 6% on all monies advanced by the stockholding railroads for investment in property, and we therefore further recommend that the interest rate to the railroads, on the amount being borrowed by the Agency to pay off its bonds, be increased from 5½%, as provided in the Board's resolution of April 11, 1929, to not less than 6%, effective January 1, 1930.

- We are not unmindful of the provision under item (j) of Section 4, ARTICLE V, of the Operating Agreement for the setting aside of surplus for investment in physical property but it is our opinion that the Board should not act under this provision, because (1) it would take from non-stockholding railroads money for investment in property in which they would have no interest; (2) the interest of stockholding railroads in property so acquired would not be proportionate to the amounts thus charged to them; and (3) there would be no interest charge in the operations of the Agency on the cost of the property.

Mr. McDonald has been away and has not participated in the consideration of this subject.

G. M. SHRIVER
W. B. CLARK
January 27, 1930. F. W. CHARSKE, Chairman.'

After discussion, on motion, duly made, seconded and carried, the recommendations of the Finance Committee were approved, with the understanding that the rate of interest to be paid on the amounts borrowed shall be 6% per annum."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Railway Express Agency, Incorporated, this 3rd day of February, 1930.

(SEAL)

E. R. Merry, Jr.

Secretary

In my opinion a resolution by the Board of Directors of

20023-E

Respondent Railroads
Exhibit No. 34

March 5, 1930

SUBJECT: Advances for Redemption of
Bonds for Sinking Fund.

Mr. H. R. Kurrie,
President, Chicago, Indianapolis & Louisville Railway,
608 South Dearborn Street, Chicago, Ill.

Dear Sir:

I have your letter of February 25th in reference to the action of our Board of Directors authorizing deductions from express revenues payable to carriers under the Operating Agreement of amounts to provide funds for expenditures for additions and betterments to the Real Property and Equipment Accounts of the Agency heretofore made, as well as for future like expenditures.

It is true that the Standard Operating Agreement contains provisions which would enable the Agency to reduce the amounts payable to the rail carriers by charges against Profit and Loss for the accounts you have named, viz:

"409. SuprlusApplied to Sinking and Other Reserve Funds."
"411. Suprlus Set Aside for Investement in Physical Propert

The use of these accounts, however, is voluntary on the part of the Agency, and the Board has decided in this case and in the case of the funds required to retire maturing Bonds not to use them.

If you will refer to the report of the Finance Committee which accompanied my circular letter of February 5th you will observe the reasons assigned for not using them, as follows:

> "We are not unmindful of the provision under item (j) of Section 4, ARTICLE V, of the Operating Agreement for the setting aside of surplus for investment in physical property but it is our opinion that the Board should not act under this provision, because (1) it would take from non-stock-holding railroads money for investment in property in which they would have no interest; (2) the interest of stockholding railroads in property so acquired would not be proportionate to the amounts thus charged to them; and (3) there would be no interest charge in the operations of the Agency on the cost of the property."

In addition to the reasons assigned by the Committee there is the further objection to the use of these accounts that such a situation would present the anomaly of contributions to the capital of the Agency by the contract rail lines out of revenues and a progressive increase in the equity of the stock of the Agency held by the "participating railroads" without the reflection in their asset accounts of the cost or value of such increase. This objection was voiced by Commissioner Campbell in the hearing and conference in Washington in January, 1929 when the approval of the Operating Agreement and of the proposed issue of bonds was under consideration in Finance Dockets 7316 and 7322.

It would appear that the payment of interest to carriers upon the advances made would really place these investements in about the same category as contributions to the capital of a joint facility, such as a union station, by proprietary railroads. In other words, the capital provided through the advances yields 6% interest to the creditor, and such interest when charged into the income statement by the debtor is borne by the users of the property in the proportions of the use made by them, respectively. In these circumstances, the interest rate being fair, it would not make a great deal of difference how the amounts of the capital obtained is distributed among the interested railroads.

Yours truly,

(signed) Chas. A. Lutz

Vice President.

Respondent Railroads
Exhibit No. 45

Minutes of the Meetings
of the Board of Directors
of Railway Express Agency,
Inc.

VolumeH

Pp. 153-6

MINUTES OF THE REGULAR
MEETING OF THE BOARD, in
applicable part

September 27, 1938

In recognition of his long and faithful service, the President recommended that Mr. Chubb's name be placed on the Agency's Special Allowance Roll at $6.00 per month, effective July 1, 1938; which recommendation, on motion, duly made, seconded and carried, was approved.

PURCHASE OF STOCK FOR ACCOUNT OF SOUTHERN RAILWAY COMPANY

The President referred to action of this Board on July 26, 1938, relative to the purchase of stock of Railway Express Agency, Incorporated, for account of Southern Railway Company, and reported that all of the 24 shares desired by that company had been purchased and that such stock had been transferred, in accordance with request of President Norris of the Southern Railway Company, to the following companies:

Southern Railway Company.....	19	shares
The Cincinnati, New Orleans and Texas Pacific Railway Company.....	3	"
The Alabama Great Southern Railroad Company..	2	"
Total	24	"

The President also reported that the Agency had reimbursed the holders from which the stock was purchased for the advances made by them, aggregating $855,407.37.

ECONOMY PLAN

The President reported that as a result of the adoption of the Economy Plan which was made effective July 1, 1933, 392 positions had been discontinued during the months of July and August, and that savings amounting to $51,831.09 a month had been realized.

BUDGET AUTHORIZATIONS - AUGUST, 1938

The President reported that, under budget approved for 1938, capital expenditures had been authorized during the month of August, 1938, as

follows:

Improvements to Buildings	$ 1,130.62
Automobile Trucks -	
Additional Equipment	1,070.32
Replacement of Worn-Out Units	8,006.31
Platform Trucks and Tractors	
Additional Equipment	44.44
Miscellaneous Equipment	2,447.90
Total	$12,699.79

STATEMENTS OF REVENUE AND EXPENSES

Comparative Statements of Revenue and Expenses of the company for the month of August, 1938, with August, 1937, and 1929, and for the first eight months of 1938, with corresponding periods of 1937 and 1929, were presented, and, on motion, duly made, seconded and carried, ordered filed.

COMPARATIVE STATEMENT OF RESULTS OF OPERATIONS UNDER STANDARD OPERATING AGREEMENT - JULY, 1938

Comparative Statement of Results of Operations under Standard Operating Agreement for the month of July, 1938, and for the first seven months of 1938, with corresponding periods of 1937, was presented, and, on motion, duly made, seconded and carried, ordered filed.

REFINANCING AGENCY'S BONDS AND ADVANCES - ADJUSTMENT OF AGENCY'S DEPRECIATION RESERVE

The President referred to action of this Board at its meeting of February 23, 1933, referring to the Finance Committee for consideration and recommendation the questions of (1) the Agency issuing and selling new bonds to pay off its existing 5% Serial Gold Bonds, Series A, and non-negotiable debt representing advances made to it by its stockholders; and (2) of proposed adjustment of overaccrual of depreciation. He presented report of the Finance Committee, dated August 31, 1938, as follows:

"RAILWAY EXPRESS AGENCY, INCORPORATED

Finance Committee.

August 31, 1938.

"Mr. L. O. Head,
President, Railway Express Agency, Inc.,
230 Park Avenue, New York, N. Y.

Dear Mr. Head:

"Referring to your letter of March 1, 1938, advising that the Board of Directors of the Railway Express Agency at meeting held on February 23, 1938, had referred to the Finance Committee for consideration and recommendation questions (1) of the Agency issuing and selling new bonds to pay off its existing 5% Serial Gold Bonds, Series A, and its non-negotiable debt representing advances made to it by its stockholders, and (2) of proposed adjustment (reduction) of the Agency's depreciation reserve by approximately $2,866,110.

We recommend that the Board of Directors authorize, subject to the approval of the Interstate Commerce Commission, the issue and sale of $25,000,000 face value of bonds in substantially the same form as the existing 5% Serial Gold Bonds, Series A, for the purposes (a) of redeeming the existing bonds maturing after March 1, 1939, such bonds to be called as provided in the Indenture, and (b) of paying its non-negotiable debt; the principal of the new bonds to be payable in annual or semi-annual installments over a period of 10 years or 15 years, whichever is found to be more advantageous to the Agency.

We compute the difference in interest as between $16,000,000 principal amount of 5% bonds and the same amount of 4% bonds, payable in semi-annual installments over a period of 10 years, at an annual average of $384,000 instead of $160,000 as stated in your letter, but this is not of consequence since it is believed that a new issue of 10-yr. serial bonds can be sold on substantially less than a 4% basis.

Since the stockholding railroads in effect pay to themselves the interest on their advances to the Agency, no saving would be effected, considering the railroads and the Agency collectively, by reducing the interest rate on these advances, but if the railroads need for other purposes the amounts which they have loaned to the Agency and the Agency can borrow the money elsewhere at less cost than the individual railroads can borrow, a saving will be effected; and we are of opinion that this is so.

We further recommend that the proposed adjustment of the Agency's depreciation reserve be not made, for the reasons: (a) we are of opinion that the amount representing actual depreciation and obsolescence in the company's properties is not known and cannot be accurately estimated, the rates prescribed by the Commission being at best informed guesses; and (b) an entry on the books writing down the depreciation reserve will not put any additional dollars in the Agency's treasury which could be paid to the railroads. If the Agency has at any time more cash on hand than is

needed in its operations, the excess can be disbursed to the railroads in repayment of advances made by the railroads to the Agency.

Yours very truly,

E. G. BUCKLAND
W. B. CLARK
G. M. SHRIVER
F. W. CHARSKE, Chairman."

Chairman Charske of the Finance Committee, having been invited to attend the meeting, was present during and participated in the discussion of this subject, remaining throughout the balance of the meeting.

After discussion, on motion, duly made, seconded and carried, the following resolutions were adopted:

RESOLVED, That it is the conclusion of this Board of Directors that negotiations should be continued with the bankers to arrive at a definite basis on which the outstanding amount of bonds of approximately $15,000,000 may be refunded and that the refunding be limited to this amount; and that the President be, and he hereby is, authorized to take such other steps as may be necessary to consummate this arrangement; and be it

FURTHER RESOLVED, That Counsel for the Agency be directed to draw up the necessary form of resolution to make this financing effective, such resolution to be made a part of the minutes of this meeting.

Depreciation Reserve

The recommendation of the Finance Committee in its foregoing report that the proposed adjustment of the Agency's depreciation reserve be not made was considered, and, on motion, duly made, seconded and carried, approved.

ADJOURNMENT

On motion, duly made, seconded and carried, the meeting was adjourned.

Secretary

COPY 398

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

E.G.Buckland
Chairman of the Board

Respondent Railroads
Exhibit No. 52

New Haven, Conn., December 17, 1938.

Mr. E. S. French, President,
Boston and Maine Railroad,
Boston, Mass.

Dear Mr. French:

I am glad to respond to the questions raised in your letter of December 15th relating to the proposed agreement between the railroads and the Railway Express Agency looking to a refinancing of $16,000,000 of obligations at a lower rate of interest.

Let me say at the start that I have never regarded myself as a representative only of The New York, New Haven and Hartford Railroad Company of the New Haven system while sitting on the board of the Railway Express Agency. I am and have been from the start elected to that position not only as a representative of the Eastern group but as a representative of the New England Railroads in that group and therefore I have always felt an equal responsibility for all of the railroads in New England excepting the Boston & Albany which is represented on the board by Mr. Williamson of the New York Central.

The proposed agreement has for its object the refunding of $16,000,000 serial notes now outstanding bearing interest at the rate of 5%. This is what remains of a $63,000,000 issue made at the time when the Railway Express Agency acquired the property of the American Railway Express Company in March 1929. It was so obvious that this rate of interest ought to be reduced that we on the finance committee advocated and devised that which has resulted in the plan and agreement submitted to the stockholding railroads. The only purpose of keeping the old

limit of $32,000,000 was to enable the Agency, if the Board of Directors should think it advisable, to issue additional notes for corporate purposes which would have an equal standing with those already issued under the indenture. We do not anticipate having to avail ourselves of this limit, but it is obvious that if we do not have it, then the only alternative would be to obtain the money by taking it from the amount available for railroad operations and would deprive the railroads currently of the cash which they would otherwise receive. The Board of Directors representing the stockholding railroads would include the railroads receiving more than 65% of the railroad transportation accruing under the contract. It would therefore seem that the directors could be depended upon to take only such action as will benefit all the railroads because otherwise their railroad would be the greatest loser. This responds to paragraph 1. of your letter.

As to paragraph 2: I am advised by the Agency this morning that up to the present time stockholders receiving 68.79% have executed the agreement and promises have been received from other railroads indicating action at an early date bringing the total up to a total of 81% of the rail transportation revenue. This indicates that it is reasonable to expect that all or nearly all of the stockholders will sign the agreement and therefore anything in the way of increased participation if it should happen would be negligible.

In answer to your paragraph 3: The present information is that the saving instead of being $1,500,000 will be $1,900,000. Your understanding is entirely correct that this increase in rail transportation revenue is to be distributed among the carriers parties to the

agreement under Article V, Section 4 of the Operating Agreement. Insofar as the interest paid by the Express Agency upon the amounts advanced by the railroads is concerned, this is largely a wash transaction because the Agency must first secure the amounts with which to pay such interest by deductions in arriving at rail transportation revenue. With the reduction in interest rate from 6% to 5% on the advances the amounts deductible in arriving at rail transportation revenue obviously will be reduced. I think it will be clear to you from this explanation that the situation under which the advances are made to the Agency by your Company is not comparable to that under which expenditures are made for improvements, and I may say that I have been the outstanding one in the Agency to insist upon the reduction of the rate of interest allowed on the advances. I have felt for some time that even though this payment of interest was a bookkeeping transaction as to the stockholding railroads, yet the picture of the owning railroads paying themselves 6% upon advances just to retire serially 5% bonds would to the unthinking accuse the management of milking the company at the instance of the larger railroads. This would be even more apparent when the rate of interest is reduced to an average of about 2% as will be the case when this financing is completed.

You may be interested to know that the rate of interest will vary with the maturities. The first maturity, June 1, 1939, will be at the rate of 3/8%. The last maturity, December 1, 1948, will be at the rate of 2 1/2%. The average rate is 1.998%, which is I believe the lowest rate of interest at which any railroad securities have been put out. The expected cost, everything included will be at the rate

of 2.2%. The bankers propose to take them at 99 and sell them at an average of par. In this case the saving to the Railway Express Agency is said to be $1,802,250, an average of a little over $190,000 per year.

In conclusion I think you ought to know that we are not sure of continuing even 5% on the advances. If the rate for money continues as low as it is now I should feel at liberty, unless I was instructed to the contrary by the New England Railroads, to urge as low a rate as 4% upon these advances. Again I repeat whatever is saved in interest is gained in rail transportation revenue.

I imagine you are inquiring for the Boston & Maine and the Maine Central, because at the meeting yesterday Mr. Head, the President, stated that he had not received your agreements.

I can unhesitatingly recommend your acceptance and execution. I have similarly recommended to the Trustees of the New Haven and they in turn to the Court which has authorized acceptance by the New Haven.

Very truly yours,

(signed) E. G. Buckland

Chairman.

Respondent Railroads
Exhibit No. 53

RAILWAY EXPRESS AGENCY
Incorporated
LAW DEPARTMENT
230 PARK AVENUE
NEW YORK

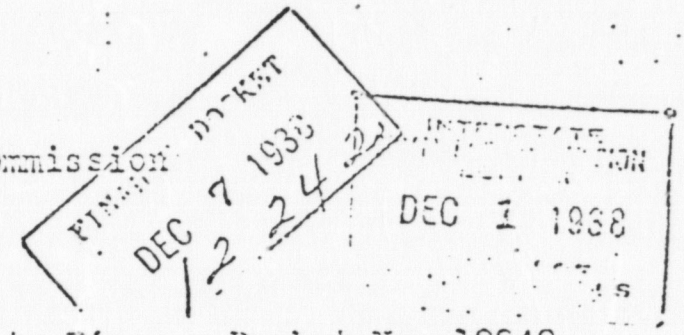
A. MARX
VICE-PRES. AND GENERAL COUNSEL

H. MOORE
GENERAL SOLICITOR

C. EVANS
GENERAL ATTORNEY

FILE 29122 42

November 30, 1938



Hon. Oliver E. Sweet
Director of Finance
Interstate Commerce Commission
Washington, D. C.

Dear Mr. Sweet:

Referring to Finance Docket No. 12242, Application of Railway Express Agency, Incorporated, under Section 20a of the Interstate Commerce Act for the authority of the Commission to issue $16,000,000 principal amount of its serial Notes:

Attached to said application is a form of agreement which, as stated in the application, the applicant proposes to enter into with railroad companies which are holders of capital stock of the applicant providing for advances to be made from time to time for the purpose of meeting principal payments in respect of the Notes. The question has arisen as to whether the authority of the Commission is necessary for railroad companies to execute such agreements as constituting an assumption of obligation or liability under Section 20a. I understand that no such authority is necessary, largely because the agreements do not constitute a direct obligation or liability to holders of the Notes and is in effect merely an agreement to loan money to the Agency or to permit the Agency to defer payment of a portion of Rail Transportation Revenue and pay interest thereon.

May I ask if you will kindly confirm this understanding?

Yours very truly,

H. S. Marx.

HSM/CT

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ACD:EMR

(52)

FILE

Finance Docket No. 12242

December 5, 1938

Respondent Railroads
Exhibit No. 54

Mr. H. S. Mark,
Vice-President and General Counsel,
Railway Express Agency,
230 Park Avenue,
New York, N. Y.

Dear Sir:

Referring to your letter of November 30, 1938, pertaining to the application of the Railway Express Agency for authority to issue $16,000,000 of serial notes, you are advised that consideration has been given to the draft of the proposed stockholders' agreements to be executed between the various stockholders and the Railway Express Agency. It does not appear that these agreements contain any promise or agreement on the part of the carrier executing it whereby any obligation whatsoever would be imposed upon it to do anything at any time, the effect of it being an acquiescence in certain acts to be performed by the Railway Express Agency. It is therefore the view of this bureau that terms of the stockholders' agreements are such as not to impose any obligation upon the carriers executing them, which would subject them to the provisions of section 20a in regard to the assumption of obligation and liability in respect of the securities of another. Your understanding of the matter as set forth in your letter is confirmed.

Very truly yours,

(Signed) OLIVER [illegible]

Director.

RAILWAY EXPRESS AGENCY
Incorporated
Law Department
230 Park Avenue
New York 17

H. S. MARX
Vice-Pres. and General Counsel

Respondent Railroads
Exhibit No. 65

October 24, 1946.

Mr. L. O. Head, President
Railway Express Agency, Incorporated
230 Park Avenue
New York 17, New York.

Dear Mr. Head:

Referring to the matter of calling for redemption the outstanding Notes of the Agency in the amount of $3,200,000 on December 1, 1946, the Agency to advance the $3,200,000 and be reimbursed by advances through deductions from Rail Transportation Revenue payable to stockholding carriers:

The Stockholders' Agreements provide for deductions from Rail Transportation Revenue to make the principal payments on the Notes as they become due. If the Notes are called for redemption on December 1, 1946, the principal payments will become due on that date. (Indenture, Article Four, Section 4). This would mean that the entire $3,200,000 should be deducted from Rail Transportation Revenue prior to December 1, 1946. That would require substantial deductions to be made before December 1, 1946, at a time when Rail Transportation Revenue is very low for a number of the stockholding carriers and would involve the payment of 5 per cent interest on the advances so made which would more than offset the interest saving resulting from redemption of the Notes. However, the Stockholders' Agreements further provide:

> "that the Express Company shall not be required to make any deduction in respect of any principal payment becoming due upon optional call for redemption of Notes if in the judgment of its Board of Directors the Express Company has other funds available to provide for the payment of the Notes to be redeemed."

I understand the Agency has sufficient cash to advance the $3,200,000 to redeem the Notes, provided it be reimbursed by continuance of the monthly deductions in the same manner as at present under the Stockholders' Agreements, thus saving the interest on the Notes to the benefit of the carriers. Thus, the Company has "other funds available to provide for the payment of the Notes to be redeemed", provided the Company be reimbursed by continuance of the advances.

In my opinion a resolution by the Board of Directors of the Agency would be valid, authorizing advance by the Agency of the $3,200,000 and reimbursement of the Agency by advances from the stockholding carriers. Attached is draft of such a resolution, to be adopted as one of a series of resolutions authorizing the redemption of the Notes.

Such a resolution would be in accord with the understanding from the beginning of the Agency that the stockholding railroads would advance to the Agency the money necessary to meet the principal payments of obligations issued to purchase the property and for organization expenses and working capital, for which the original $52,000,000 bond issue was created. The Stockholders' Agreements were in furtherance of that understanding.

Prior to the Stockholders' Agreements deductions from Rail Transportation Revenue to make the principal payments on the Agency's bonds were made under resolution of the Board April 11, 1929, as amended January 31, 1933. The preamble to the resolution of April 11, 1929, stated that the Committee of Counsel for Agents had ruled that such provision could be made under the Plan. I have been unable to find that the Committee of Counsel made such a ruling in writing. However, the files and records of that committee show that they so ruled in negotiations and conferences with representatives of some of the railroads in the fall of 1928, when the railroads were asked to join in the Plan, and the roads were assured provision could be made to give the participating railroads a property interest proportionate to their sinking fund contributions.

At the meeting of the temporary Board of Directors, which acted to organize the Company, February 28, 1929, Mr. Henry W. Clark, one of the Directors and a member of the Committee of Counsel, stated that he was prepared to move the adoption of a resolution determining the method of providing for the payment of the bonds issued March 1, 1929, so as to provide for vesting in the railroad companies contributing to any sinking fund a property interest proportionate to their contributions, and the Legal Committee had ruled that such provision could be made under the Plan and had agreed to recommend to the Board of Directors when constituted that such provision be made. Mr. Clark submitted a form of resolution which was read to the meeting. The minutes of the meeting state:

> "Discussion developed a sentiment that this action ought to be taken by the Board of Directors to be elected at the annual stockholders meeting rather than by the present Board. Thereupon with the concurrence of all the members of said Legal Committee, all of whom are members of this Board and present at the meeting, said resolution was submitted and ordered spread on the minutes of this meeting, as the recommendation of the Legal Committee."

The resolution set forth in the minutes of the meeting of February 28, 1929, was in substantially the form adopted by the Board of Directors at its meeting April 11, 1929.

As above stated, a resolution by the Board as now proposed would carry out the understanding that the stockholding railroads would advance the money necessary to meet the principal payments of the Agency's funded obligations.

Yours very truly,

(Signed) H. S. MAEX.

Vice President and General Counsel

RESOLVED, that monthly deductions from Rail Transportation Revenue of stockholding carriers and the credit thereof as advances be continued in the manner prescribed in the Stockholders' Agreements to the extent necessary to restore to the Company the $3,200,000 principal amount to be deposited with Guaranty Trust Company as Trustee under the Indenture dated December 1, 1936, for use by said Trustee in redeeming on December 1, 1946, the Serial Notes, Series A of this Company which by their terms would mature subsequent to December 1, 1946, such restoration to be at the rate of $133,333.33 per month. Until the further order of this Board this Company shall pay or credit semi-annually interest at the rate of 5 per cent per annum from June 1st and December 1st in each year on the total amount of such advances as of those respective dates as well as on advances made prior to December 1, 1946.

Respondent Railroads
Exhibit No. 91

Before the

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 33140

EXPRESS CONTRACT, 1959

TESTIMONY OF WILLIAM B. JOHNSON
President
RAILWAY EXPRESS AGENCY, INCORPORATED
219 East 42nd Street
New York 17, N. Y.

[Full text of statement appears as pages 8 - 32 of transcript of August 18, 1959, pages 119 - 143 of this Appendix.]

(RR Ex 92)

THE PENNSYLVANIA RAILROAD COMPANY

FINANCIAL DEPARTMENT

David C. Bevan
Vice President
Philadelphia 4, Pa.

Reply to:
1334 Transportation Center
Six Penn Center Plaza
Philadelphia 4, Pa.

July 28, 1959.

Messrs. W. R. Grant
C. J. Jump
L. Spencer Miller
L. F. Ormund
John B. Reid
R. G. Rydin
Members of Finance Committee - Railway Express Agency

Gentlemen:

You have received a copy of the letter addressed to me by [illegible] Johnson, President of the Railway Express Agency, together with [illegible]ts attachments, namely, the report of the Board of Directors to the Standard Agreement Railroads, dated July 2nd, and the report of Mr. Johnson, dated July 6th, to the chief executives of the carriers which are parties to the agreement. From these papers it is evident that the Board of Directors decided that the railroad advances to the Agency should be evidenced by non-negotiable notes and that the Finance Committee of the Agency has been directed to consider promptly what the terms and conditions of such notes should be.

I thought it might assist in progressing this matter if I submitted a definite proposal to you for your consideration and commments with the thought that if it proved acceptable, it would eliminate the necessity of our meeting upon the question. It is suggested that the Agency issue 5% Notes maturing on December 31, 1973; that the Note Agreement contain a provision that no dividends will be paid prior to their retirement; that the Notes be callable at par, in whole or in part, in amounts not less than $1,000,000 upon 30 days' notice and that such redemption shall be on a pro rata basis. That provision shall be made for a Sinking Fund commencing with the year 1965 (the $7,000,000 loan made with the Guaranty Trust Company includes a restriction against the retirement of any advances prior to

the maturity of this loan). The Sinking Fund shall operate on March 1, 1966, and each year thereafter and shall be 10% of the net income of the Agency, that is 10% of the 50% retained by the Agency of the amount in excess of the out-of-pocket expenses of the roads. The Sinking Fund shall be operated on the basis of a request for tenders and the acceptance of the lowest bids at par or less.

It seems to me that the foregoing proposal is a relistic approach to the Agency situation in that it makes some provision for the retirement of debt without being onerous. If at any time the Agency is in a position to finance at a lower interest cost, it may call all or any substantial portion of these notes.

Very truly yours,

DAVID C. BEVAN

cc: William B. Johnson

Respondent Railroads
Exhibit No. 93

RAILWAY EXPRESS AGENCY

INCORPORATED

OFFICE OF VICE PRESIDENT, ADMINISTRATION AND FINANCE
219 EAST 42ND STREET
NEW YORK 17, N. Y.

C. J. JUMP,
VICE PRESIDENT

July 31, 1959

Mr. David C. Bevan,
Chairman, Finance Committee,
c/o The Pennsylvania Railroad Company,
Six Penn Center Plaza,
Philadelphia 4, Pa.

Dear Mr. Bevan:

Responding to your joint letter of July 28 to members of the Finance Committee:

Bonds calling for an interest rate of 5% were issued in the sum of $32 million in 1929. Amounts required to meet the semi-annual maturities were advanced to the Agency by the stockholders. When one-half of these bonds had been paid off the remaining bonds were called and were replaced by serial notes on which the interest rates ranged from 3/4% to 2.5%. The stockholders continued to advance funds for retirement of the notes.

Interest payments on the advances received from the stockholders have been made as follows:

5½% March 1, 1929 to February 29, 1930
6% March 1, 1930 to December 31, 1933
5% December 30, 1933 to May 31, 1935
4% June 1, 1935 to date

Fixing at 5% the interest rate on the notes to be issued to the stockholders would result in an increase of 25% in the interest charges. This would be equivalent to some $285,000 a year and to that extent would reduce the amount which otherwise would be available for payment to the railroads for hauling express.

Under the Amended Express Operations Agreement now before the Interstate Commerce Commission for approval the Agency ultimately will assume fixed obligations to the railroads for the transportation of express traffic. I would hope that the railroads as stockholders will not make it too difficult for the Agency to meet the payments to the railroads as contractors when the Agency begins to operate on more nearly an arm's length basis.

It is suggested that the notes to be issued to the stockholders provide for interest payments at the prime rate in effect during each interest period; that if the prime rate should change the change in the rate to be paid to the stockholders be made as of the beginning of the interest period nearest the date of the change in the prime rate. This would bring about an immediate increase of 1/2 of 1% in the interest payments because the prime rate now is 4½% as compared with 4% now being paid by the Agency.

I concur in your proposal concerning the establishment and operation of a sinking fund. However, I believe the sinking fund provision should be 10% of the disposable income, i. e., 10% of the Agency's net after taxes.

I believe also that the notes to stockholders to cover amounts advanced by them which were required and used by the Agency to purchase the properties of the Agency's predecessor should be subordinated to any and all other indebtedness of the Agency except, perhaps, to the extent of the sinking fund.

Yours very truly,

Vice President.

cc-Messrs. W. R. Grant
E. Spencer Miller
L. F. Ormond
John B. Reid
R. G. Rydin

(RR Ex 94)

SOUTHERN PACIFIC COMPANY

John B. Reid
Vice President and Treasurer

165 Broadway, New York 6, N.Y.

August 7, 1959

Mr. David S. Bevan,
Vice President, The Pennsylvania R.R.Co.,
1334 Transportation Center,
Six Penn Center Plaza,
Philadelphia, 4, Pennsylvania.

Dear Mr. Bevan:

I agree to the proposed terms of the Notes to be issued by the Railway Express Agency for existing railroad advances, subject to the following comments:

(1) It does not seem necessary to limit the amount of any partial redemption of Notes to $1,000,000, or more. There will not be so many holders of the Notes as to make it unduly burdensome to provide for redemptions on smaller amounts which, under certain circumstances, might be desirable. Also, if the loan Agreement with the Morgan Guaranty Trust Company prohibits the redemption of any advances prior to its maturity, would it be possible to have a partial redemption prior to 1965?

(2) Even though the sinking fund will in all probability be small, it seems that it would be more equitable to provide for retirement of the Notes pro rata than to ask for tenders. If all the Notes should be tendered at par the sinking fund redemption would have to be prorated in any case.

(3) Since the Notes should not have a maturity longer than the life of the Contract, it would seem desirable to make provision for them to become due and payable at such date earlier than December 31, 1973 as the Contract might be terminated because of withdrawals or any other cause.

Yours very truly,

John B. Reid

cc: Mr. W. R. Grant, Vice President-Finance, New York Central System, 230 Mark Ave., New York 17, N.Y.

Mr. C.J. Jump, Vice President-Adm.& Finance, Railway Express Agency, Inc., 219 E. 42nd St., New York 17, N.Y.

Mr. N. Spencer Miller, President, Maine Central Railroad Co., Portland 4, Maine.

cc (cont'd)

Mr. L. P. Ormond, Vice President-Acctg., Atlantic Coast Line R.R. Co., Wilmington, N.C.
Mr. R. G. Rydin, Vice President, A.T.&S.F. Ry. Co., 80 E. Jackson Blvd., Chicago 4, Ill.
Mr. William A. Johnson, President, Railway Express Agency, Inc.,

T Atchison, Topeka and Santa Fe Railway System
EXECUTIVE DEPARTMENT
Railway Exchange, 80 East Jackson Boulevard, Chicago 4

R. G. RYDIN
Vice President

Respondent Railroad
Exhibit No. 95

August 7, 1959

RECEIVED

Mr. David C. Bevan, Vice President
The Pennsylvania Railroad Company
1234 Transportation Center
Six Penn Center Plaza
Philadelphia 4, Pennsylvania

Dear Mr. Bevan:

This will confirm my telephone conversation today with Mr. Gerstmecker with respect to your letter of July 30th having to do with the proposed conversion of the Express Agency's open accounts owing the railway companies into non-negotiable notes. I would be willing to go along with the plan which you have suggested, including the 5% interest rate, which would seem to be in keeping with prevailing conditions in the money market. The rate has been adjusted before and I suppose it could be done again by agreement if at some future time conditions seem to warrant it.

Yours very truly,

(Signed) R. G. RYDIN

cc - Mr. H. R. Grant
Mr. C. J. Jump
Mr. L. Spencer Miller
Mr. L. F. Ormond
Mr. John B. Reid
Mr. William B. Johnson

101

THE PENNSYLVANIA RAILROAD COMPANY

FINANCIAL DEPARTMENT

August 12, 1959

Railway Express Agency
Exhibit No. 96
REPLY TO

DAVID C. BEVAN
VICE PRESIDENT
PHILADELPHIA 4, PA.

M. E. S.
AUG 19 1959

Mr. William B. Johnson, President
Railway Express Agency
219 East 42nd Street
New York 17, New York

Dear Mr. Johnson:

On July 28th I wrote to the members of the Finance Committee suggesting, in very broad outline, the terms of notes to be issued in lieu of advances. A copy of this letter was forwarded to you.

I have replies from the members of the Committee indicating, in general, approval of those bread terms.

There would be of course some specific provisions contained in these notes which are more or less matters of detail and I think they can be discussed between Mr. Jump and me when the form of notes is prepared. At that time we can again have the members of the Finance Committee review this matter by forwarding drafts of the notes to them for their approval and comment.

So far as the broad issues are concerned, Mr. Jump suggested that the notes bear the prime rate of interest from time to time. It is my feeling, and the feeling of others on the Committee, that notes which are to be issued to cover advances such as these are not comparable to prime loans in any way and therefore I think it is preferable to set the rate at 5%. This is agreeable to all other members of the Finance Committee.

Mr. Jump also commented on the fact that he believed the Sinking Fund should be related to disposable income of the Agency after taxes and although I am somewhat uncertain as to exactly how the wording should be drawn with respect to Sinking Fund, we are in accord with Mr. Jump's suggestion that the 10% shall be applicable only to disposable income after taxes. We can, in preparing drafts of the notes, consider how it is best to set forth this Sinking Fund formula and I do not think we have any quarrel or difference of opinion with Mr. Jump's idea in this respect.

THIS DOCUMENT IS SUPPLIED IN RESPONSE TO INTERROGATORY (IES) #2

Mr. Jump also commented that the notes should be subordinated to any and all other indebtedness of the Agency except to the extent of the Sinking Fund and I am in accord with this so far as present debt is concerned, but there is some question in my mind as to whether or not such advances should automatically be subordinated to further indebtedness without consent of the holders.

Mr. Reed, of the Southern Pacific, has agreed to the suggested terms of the notes except that he questions the necessity for limiting partial redemptions to $1,000,000. or more, and I think his point might be well taken and that we might very well decrease this amount to $500,000. I think there will be no question that the other members of the Committee would concur. He also raises the question as to whether or not the Morgan Guaranty loan would prohibit redemption during the term of that loan and I think that the restrictions are applicable and would automatically prevent the use of Agency funds for such purpose while any loan is outstanding.

Mr. Reed also questions the suggestion that the Sinking Fund be operated by tender. This was recommended in my letter because the Sinking Fund can, by definition, be so small as to make a pro rata call burdensome and I believe the Agency should have an opportunity to apply such funds to its best advantage, and if there are holders of the notes who are willing to tender them for less than par I think the Agency should be entitled to the benefit of being able to buy them in at whatever price owners are willing to surrender them.

There is a major question in my mind as to the possibility of accelerating the date of maturity of the notes which might become necessary so far as the holders are concerned because of termination of the contract or disposal by the Agency of substantial portions of its property, etc. This is, I think, a question which Mr. Jump and I can discuss and perhaps include suitable language in the drafts of notes.

I have received advice that Mr. Ormond of the Atlantic Coast Line retired effective August 6th and that he did not feel it would be proper for him to participate in this matter. Although he felt that perhaps a substitute member of the Finance Committee would be appointed, I am under the impression that you decided to proceed with this matter without appointing any replacement.

I will be prepared whenever Mr. Jump is ready to discuss any of these questions in more detail so that drafts of the notes can be progressed.

Very truly yours,

DAVID C. BEVAN

cc: Messrs. W. R. Grant
G. J. Jump
E. Spencer Miller
John B. Reid
R. O. Rydin

418

Respondent Railroads
Exhibit No. 102

ORDER

SERVICE DATE
JANUARY 3, 1963

At a Session of the INTERSTATE COMMERCE COMMISSION, Finance Board No. 2, held at its office in Washington, D. C., on the 21st day of December, A. D. 1962.

Finance Docket No. 22349

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

It appearing, That Railway Express Agency, Incorporated, of New York, N. Y., a Delaware Corporation, by application filed November 16, 1962, pursuant to resolutions of its board of directors as approved by its stockholders on September 17, 1962, seeks authority under sections 20a and 214 of the Interstate Commerce Act to issue 2,076,000 shares of common stock of the par value of $1 each (a) by reclassifying its present shares of common stock without nominal or par value outstanding or held in its treasury into common stock of the par value of $1 each, and immediately prior to such reclassification, to reclassify each share of its issued and outstanding stock including those shares held in its treasury, into 2,076 shares of common stock to be thereafter exchanged for new common stock of the par value of $1 each, (b) by amending its certificate of incorporation and by-laws to remove the requirement that the stock of applicant may be held only by railroad corporations, to remove the requirement that the holder of any share or shares of stock of applicant, prior to any sale, transfer or other disposition thereof, must offer such shares to applicant for purchase at the price such shares were issued, and to provide that the holders of shares of stock of the applicant shall have no preemptive rights, and (c) to authorize applicant to stamp certificates for shares of common stock, evidencing the restrictions contained in an amendment to its Standard Express Operations Agreement, and if authority is not required for this purpose, that the application be dismissed in that respect, and that no objection to the application has been offered;

It further appearing, That applicant's arrangements with its railroad stockholders prior to July 1, 1961, left it with neither profit nor loss or the opportunity to accumulate a surplus, and the railroads underwrote its financial adversities which made its debt readily acceptable to lenders notwithstanding the fact that applicant's capital was insignificant;

It further appearing, That since applicant has been on a profit and loss basis it has been able to accumulate a modest surplus, part of which it proposes to transfer to its capital stock account to effect the proposed reclassification and stock split, and that applicant is of the opinion the proposed reclassification and stock split will have the effect of bringing about a more normal balance between its funded debt and capital stock which will be of benefit to applicant in financing its future requirements for construction of its terminals;

It further appearing, That applicant's identifiable capitalizable assets, as of June 30, 1962, totaled $57,962,616, consisting of working capital $11,174,160, in this instance the difference between current assets and current liabilities, and real property and equipment less reserve for depreciation $46,788,456, and exceeded capitalization aggregating $52,514,512, consisting of advances from stockholders $27,637,054, equipment obligations $24,781,158, and capital stock $96,300, by $5,448,104; that upon consummation of the proposed transaction capitalization will be increased by approximately $1,979,700, and the surplus remaining will be adequate for the purpose for which a surplus should be maintained; and that the expenses of the proposed issue as detailed in the application are estimated at $14,000; and

It further appearing, and the said Board so finds, that the proposed issue by Railway Express Agency, Incorporated, of not-exceeding 2,076,000 shares of common stock of the par value of $1 each by reclassifying its 1,000 shares of common stock without nominal or par value, presently outstanding or held in its treasury, to common stock of the par value of $1 each, and immediately prior to such reclassification, to reclassify each share of its issued and outstanding stock including those shares held in its treasury, into 2,076 shares of common stock to be thereafter exchanged for new common stock of the par value of $1 each, and the proposed stamping of certificates for shares of common stock, evidencing them to be subject to the restrictions contained in its Standard Express Operations Agreement, as amended, as aforesaid, (a) are for lawful objects within its corporate purposes and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purposes;

It further appearing, and the said Board further finds, that except to the extent granted, the application should be dismissed in all other respects:

It is ordered, That Railway Express Agency, Incorporated be, and it is hereby, authorized (a) to issue not exceeding 2,076,000 shares of common stock of the par value of $1 each by reclassifying 1,000 shares of its common stock without nominal or par value to common stock of the par value of $1 each, presently outstanding or held in its treasury, and immediately prior to such reclassification, to reclassify each share of its issued and outstanding stock including those held in its treasury into 2,076 shares of common stock to be thereafter exchanged for new common stock of the par value of $1 each, and (b) to stamp certificates for shares of common stock evidencing them to be subject to restrictions and certain options contained in a Standard Express Operating Agreement, as amended, for the purpose as hereinbefore set forth;

It is further ordered, That in all other respects, the application be, and it is hereby, dismissed;

It is further ordered, That, before applicant issues any shares of stock as herein authorized, the proposed amendment to its certificate of incorporation, providing for the changes in its capital stock, shall be made effective, and a copy thereof, duly certified by an appropriate public officer, shall be filed with this Commission within 10 days after it is made effective;

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by the applicant, unless or until so ordered or approved by this Commission;

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the order of this Commission, by Division 4, dated August 9, 1946, as amended, respecting applications filed under sections 20a and 214 of the Interstate Commerce Act (49 C.F.R. 56.4 and 56.6);

It is further ordered, That the applicant shall submit for consideration and approval of this Commission three copies of the journal entries required to record the transaction; and

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said stock, or dividends thereon, on the part of the United States.

By the Commission, Finance Board No. 2.

Harold D. McCoy

HAROLD D. McCOY,

(SEAL)

Secretary.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 20812

(Reopened by Order of the Commission January 9, 1973)

VERIFIED STATEMENT OF JAMES E. WALTER

My name is James E. Walter. My home address is 641 Sussex Road, Wynnewood, Pennsylvania 19096. My business address is Finance Department, The Wharton School of Finance and Commerce, University of Pennsylvania, Philadelphia, Pennsylvania 19174. I have been Professor of Finance at the Wharton School since 1962. Prior to that time I taught at the Harvard Business School, Carnegie-Mellon, University of California (Berkeley), and Duke University. My academic background is, as follows: A.B. in Economics from Duke University in 1942, I.A. from the Harvard Business School in 1943, and Ph.D. in Economics from University of California (Berkeley) in 1953.

I am the author or coauthor of several books, including The Investment Process: As Characterized By Leading Life Insurance Companies and Dividend Policy and Enterprise Valuation, and numerous articles in the areas of accounting,

corporate finance and investments. I am a member of Phi Beta Kappa and of several professional societies and have served as an associate editor of the Journal of Finance. I have also served as an expert consultant with the S.E.C., the Department of Commerce, the Small Business Administration, and the Treasury Department. Additional details as to my qualifications are provided in my resume appended hereto.

QUESTIONS POSED FOR CONSIDERATION

This Statement addresses itself principally to the following five queries. One, what was the real effect upon REA of substituting "Advances" for "Surplus Applied to Sinking and Other Reserve Funds" as provided in Account 409? Two, was the repayment of debt incurred by REA truly an expense of doing business? Three, what was the nature of the railroads' total contribution to -- or investment in -- REA? Four, upon what implicit suppositions is the Verified Statement of L. John Eichner based in its analysis of financial benefits accruing to the railroads through ownership of REA? Five, what is the common sense, financial view of the 1969 sale transaction involving REA?

In considering these questions, I have reviewed the following materials: "Verified Statement of Facts

Submitted by Certain Railroad Companies" dated October 9, 1974; "Brief of Certain Railroad Companies" dated October 9, 1974; "Brief Together with Proposed Findings and Conclusions Submitted on Behalf of REA Express, Inc.," dated October 9, 1974; "Verified Statements on Behalf of REA Express, Inc." dated October 9, 1974, and other materials cited herein.

I. Assessment of Real Effect

In assessing the real effect -- if any -- upon REA of substituting advances for surplus appropriations to cover sinking fund payments, four factors are especially pertinent. They include (a) the specific nature of the SEOA governing the distribution of express revenues, (b) the varying degree of railroad participation in advances, (c) the tax consequences of appropriations from surplus, and (d) the ingredients that go into express rate determination.

A. The 1929 SEOA

As evidenced by Article V of the SEOA, rail transportation revenue, defined approximately as gross express revenue (less 85% of gross revenue from carload shipments) minus operating expenses and other deductible items, was to be distributed monthly to railroad parties to the contract in proportion to their gross express transportation revenues other than carload business. The 1929 agreement stipulated that REA would not use Account 329 for "Dividend Appropriations

of Income," and the "Report and Plan for Future Conduct of Express Business" (R.R. Exh. 2, p. 11) stated that REA "shall realize no net income for distribution as dividends."

It follows from the residual character of rail transportation revenue that, other things being equal, the choice of advances over surplus appropriations in accounting for the sinking fund payments ought not to have any net impact upon REA, apart from the form of its capital structure. In particular, the net worth items, labeled "Surplus Applied to Sinking and Other Reserve Funds" was replaced by the subordinated debt item, labeled "Advances." The cash utilized to repay the external debt was not distributed to the railroads under either alternative. Moreover, interest paid on advances had the effect of decreasing rail transportation revenue by a like amount. As long as the underlying revenue and expense conditions remained unaffected thereby, the preference for advances by the railroads left aggregate net cash payments by REA to the railroads unaltered. Allowance for the fact that the adoption of the advance alternative produced certain changes in the underlying circumstances modifies somewhat the initial supposition of no real effect upon REA and the railroads, as indicated below.

B. Varying Degree of Railroad Participation

For one thing, recipients of rail transportation revenue made advances based upon share ownership rather than

in proportion to their express business as would have been the case under the surplus appropriation alternative. Although the fact of no real effect still obtained for REA in the sense of unchanged total distributions to railroads, net receipts accruing to different railroads were of course modified.

C. Tax Consequences

Had the surplus appropriation alternative been adopted, it appears that REA would have been deemed by the tax authorities to have taxable income equal to the amount allocated to sinking fund payments. As indicated below, the repayment of debt is not generally regarded as an expense of doing business.

Inclusion of the corporate income tax, in an amount equal to the then prevailing tax rate applied to the sinking fund payment, as a deductible item in REA profit and loss accounts would have had two possible real effects. One, rail transportation revenue would have been reduced accordingly. Two, the diminished revenue to railroads might have constituted grounds for adjustment in REA express rates, had the amount been sufficiently substantial.

D. Factors Involved In Express Rate Determination

The possibility that REA express rates were affected by the substitution of "Advances" for "surplus appropriations"

Vol. XXXII. No. 1 (March. 1965). pp. 141-5.

hinges upon (1) the attitude of ICC toward -- and its understanding of -- appropriations from surplus for sinking and other reserve fund purposes, and (2) the precise nature of the railroads' investment in REA. In short, did the ICC authorize express rates that were designed to cover the full costs to the railroads plus a reasonable return on their small initial investment plus sinking fund payments? More important, did the railroads in actual fact receive express-privilege payments sufficient to compensate them for the cost of services rendered?

It is worth noting that basic express rates were fixed over relatively extended periods during which rail transportation revenues accruing to the railroads varied substantially. As indicated by the ICC, the rates prescribed in "Express Rates, 1922" remained in effect until April 15, 1939. The sole interim change between 1939 and 1946, moreover, was an emergency charge of 10 cents per less-than-carload shipment authorized in 1942. Increased Express Rates & Charges, 1946, 266 I.C.C. 369, 371 (1946).

Both the import of surplus appropriation for rate purposes and the nature of the railroads' investment in REA and return thereon are treated below.

II. Interpretation of Sinking Fund Payments.

Sinking fund payments (or, more accurately, periodic partial repayments of debt) are not an expense of doing business

under accepted accounting and corporate income tax practice. As L. John Eichner himself indicates (p. 20, Verified Statement), the immediate accounting transaction in connection with debt repayment involves crediting cash and debiting long-term debt. Inasmuch as net worth, defined as assets minus liabilities, remains unaffected by the accounting transaction, no expense is incurred.

The opinion that repayment of debt is not an expense item is confirmed by reference to P. Hunt, C. M. Williams, and G. Donaldson, Basic Business Finance (Homewood: Richard D. Irwin, 1961). In their words (p. 293):

> "It must be emphasized that the privilege of deducting debt cost for purposes of income tax computation does not extend to sinking fund payments. Although such payments involve a cash drain similar to the payment of interest, the sinking fund payment is in fact a repayment of part of the liability, which is the principal of the bonds, and cannot be counted as a cost any more than the original proceeds of the loan received by the company would be counted as income. A sinking fund should therefore be regarded as a contractual commitment defining how earnings, or a part of earnings, shall be used."

Notwithstanding the accepted view that sinking fund payments constitute non-expense items, L. John Eichner states (p. 32, Verified Statement) that "The sinking fund payments should have been recorded as an REA expense on REA's income statement . . ." (underlining added for emphasis). Confusion over the treatment of sinking fund payments may stem from the ambiguity of the term surplus, as used in such provisions as

" . . . shall include amounts definitely appropriated from surplus and applied to sinking and other reserve funds." (ICC Uniform System of Accounts, No. 409, as quoted on p. 7 of Eichner Statement.) Indeed, accounting captions, such as paid-in surplus and earned surplus, used to denote components of net worth have tended to be replaced by more informative terms. The term surplus is sometimes misconstrued to mean excess or available cash despite the fact that cash available to defray obligations is an asset -- not a liability or net worth -- item.

In any event, the ICC's 1929 Report in Securities and Acquisition of Control of Railway Express Agency, Incorporated understood the true import of "surplus appropriations". In referring to such deductible items as "surplus applied to sinking funds or set aside for investment in physical property", the Report stated that "It should be understood that all we are here passing upon is the plan for pooling and dividing earnirgs . . . . Nothing herein contained is to be construed as an expression of opinion upon the propriety of such deductions in connection with the determination of recapturable income under section 15a of the interstate commerce act." (150 I.C.C. at 434).

The implications of the foregoing considerations for the surplus appropriation alternative are twofold. One, contrary to Mr. Eichner's opinion, an asset of the railroads was created

by repayment of REA's bonds in that the net worth of their wholly-owned subsidiary (REA) was increased. Two, since the ICC apparently understood the distinction between income and expense, it is reasonable to conclude that such non-expense items as sinking fund payments would not have been considered in setting express rates.

III. The Railroads' Contribution to REA

Mr. Eichner's conclusion (p. 34, Verified Statement) that "as a result of a cash investment of only $100,000, the railroads were enhanced financially from 1929 to 1970 . . ." ignores certain relevant contributions by the railroads. Specifically, his conclusion fails to take account of the fact that (1) REA express contracts with the railroads represented the credit base upon which the $30 million loan to REA was extended, and (2) any excess of railroad costs over revenues received by the railroads amounted de facto to additional investment by the railroads in REA.

A. Credit Base

It is almost axiomatic that long-term debt cannot be obtained in an amount equal to the asset value of the borrower unless special conditions prevail. Lenders ordinarily demand a margin of safety that recognizes the potential loss in value conditional upon financial difficulty and forced liquidation. In the case of REA, the special circumstance

was the REA express contracts with the railroads. The railroads in effect subordinated their revenue claims to cover their transportation expenses to the sinking fund payments. It made little difference whether the subordination took the accounting form of "surplus appropriations" or "advances"; revenues distributed to railroads -- in total -- came after sinking fund payments.

In short, the railroads occupied a residual position in that they (that is, the share-owning railroads) received cash payments from REA net of debt repayment and bore the risk of variability of net cash payments by REA.

B. De Facto Contributions

Any excess of railroad costs properly allocable to express operations over net cash paid by REA to the railroads constituted additional investment in REA by the railroads. Since the railroads had to cover such deficits from other revenue sources than REA, the real effect on the railroads was analogous to a direct cash investment in REA.

Although it is not possible to recapture fully the considerations that entered into the setting of REA rates, it is reasonable to suppose that such rate determinations took account of both the true costs involved and return on investment. In support of this assumption is a passage from a 1939 rate proceeding of REA which is quoted in a 1946 express rate proceeding:

"Since no net income or profit accrues to applicant, and no dividends are paid or payable on its capital stock, the express-privilege payments to its stockholders in theory include the operating costs incurred by the individual railroads in such services as they perform in connection with express transportation, taxes, and return on the investment in the property so used, and a return also on the investment in the property owned by the applicant, to the extent that it is not covered by interest charges on the applicant's funded debt." Increased Express Rates & Charges, 266 I.C.C. 369, 373 (1946).

On the basis of the above, it follows that, whether labeled "surplus appropriations" or "advances", the railroads periodically made additional investments (over the original $100,000) equal to the sinking fund payments. Stated another way, the net revenues to the railroads fell short of their recognized costs by the amount of the recurring debt repayment. This difference had to come out of the railroads' pockets.

In actual fact, the railroads may have indirectly invested additional monies in REA above and beyond the advances made. Substantial evidence has been developed to support the conclusion that rail transportation revenue (before advances) failed upon occasion to cover even out-of-pocket railroad costs (Railroad Reply Brief, pp. 86-92).

The logic of the argument indicates that interest paid on advances was properly included in setting REA rates in that it represented return on added investment by the railroads in REA. Considering the subordinated position of the railroads, moreover, the interest paid does not appear excessive. Mr.

Eichner's propositions that the interest payments were inappropriate and that the rate paid was excessive thus appear to be erroneous.

IV. Queries Relating to Eichner Analysis

The opinions expressed by Mr. Eichner are based upon certain implicit assumptions that either are ill-founded or cannot be substantiated. The assumptions in question are itemized below.

1. Either sinking fund payments were proper expense items, or the ICC failed to understand that sinking fund payments are non-expense items.

2. The railroads were not the legitimate owners of REA.

3. Return on investment to the railroads should not exceed the prime rate or the rate on senior debt.

4. REA -- on its own -- could have borrowed an amount equal to its asset value.

5. Net cash payments to the railroads fully covered costs and there was no additional investment (direct or indirect) beyond the original $100,000 by the railroads. The corollary is that express deficits by the railroads did not represent contributions (subsidies or investment) by the railroads to the REA operation, or that the railroads should not be compensated for their incremental (albeit, indirect) investments in REA.

6. Accounting procedures somehow conditioned both REA policy decisions (e.g., re reinvestment in equipment and facilities) and express rates.

7. The IRS decision re the propriety of depreciation allowances was incorrect.

8. The 2-1/2% accruing to REA under pre-1929 arrangements somehow belonged to REA and was relevant to the post-1929 situation.

9. Out-of-pocket costs were 70% of fully allocated costs, rather than 74%.

10. Start-up costs (or a new express business in 1929) were somehow relevant to the question at hand.

11. In its rate determination, the ICC made no allowance for inadequacies or biases in data in support of requests for rate changes.

When allowance is made for the highly questionable character of the foregoing assumptions, Mr. Eichner's assertion that the railroads benefitted from the accounting manipulation of REA in the magnitude of $231.5-$255.5 million is difficult to comprehend. Indeed, there is no clear-cut evidence that the railroads benefitted in any degree.

The railroads were the acknowledged owners of the REA between 1929 and 1958 (contrary to assumption 2). As such, they were entitled to reasonable profits, and their claim to whatever profits that REA might have generated (including

those associated with air express) were legitimate.

Unless the ICC was entirely misled as to the true nature of sinking fund payments and/or unless it permitted excessive initial returns to railroads, railroads made periodic indirect investments in REA (as described above) in the sense that net cash payments received by contributing railroads (whether in the form of interest payments or rail transportation revenues) -- net of advances -- failed to cover express costs (contrary to assumptions 1 and 5).

The railroads were entitled to a reasonable rate of return both on the initial investment and on any subsequent contributions to (or investments in) REA (contrary to assumptions 3 and 5). Since their contributions or advances occupied a subordinated position, a rate of return in excess of either the prime rate or the interest rate on senior debt appears warranted.

The nexus between accounting procedures and policy decisions re reinvestment in REA facilities and equipment is tenuous at best (contrary to assumption 6). Management presumably bases its investment decisions on its intimate knowledge of the business, whatever accounting procedures are followed.

The IRS is a reasonable authority on the adequacy of depreciation allowances (contrary to assumption 7). If the depreciation account was overstated, any reduction therein

should give rise to rail transportation revenues and the defrayal of the associated corporate income tax from REA resources seems justified.

Operating on its own, REA could not have borrowed an amount equal to its asset value (contrary to assumption 4). As stated above, the railroad agreements undoubtedly established the credit base upon which the funds were raised.

The relevance of the 2-1/2% accruing to REA under pre-1929 arrangements, together with hypothetical start-up costs mentioned by Mr. Eichner, is problematic (contrary to assumptions 8 and 10).

The fact that different opinions were expressed as to the true ratio of out-of-pocket costs to fully allocated costs (i.e., 70% is 74%) fails to substantiate the proposition that the lower figure was the true value (contrary to assumption 9).

The fact that data provided by the railroads in support of higher express rates are sometimes less than perfect fails to support the contention that such imperfections are ignored in rate setting. (Contrary to assumption 11). Indeed, it is reasonable to suppose that the rate-setting process has elements of an adversary procedure, that those testifying in behalf of rate changes are subjected to cross examination, and that the quality of the evidence is taken into account.

V. Common Sense Financial View

The common sense financial view focuses upon the 1969 sale transaction. The sale of REA in 1969 was an arms'-length transaction involving knowledgeable parties. The acquiring parties acknowledged the existence of the $27 million debt, presumably took it into account in establishing the net purchase price of $2 million, and even paid interest on the debt for some period of time. Under such circumstances, it is most difficult to regard REA and its present owners as injured parties.

VERIFICATION

Washington, D.C.) ss.

James E. Walter, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

James E. Walter
James E. Walter

Subscribed and sworn to
before me this 28th day
of October, 1974.

Elisabeth A. Bradley
Notary Public

My commission expires March 14, 1976.

VITA

Name: James E. Walter

1. Date and Place of Birth:

   February 26, 1922; Delmar, New York

2. Education:

University	Major	Dates Attended	Degree
Duke University	Economics	1939 - 1942	A.B.
Harvard University (Grad. School of Bus. Adm.)	Industrial Administration	1942 - 1943	I.A.
University of California (Berkeley)	Economics	1947 - 1950	Ph.D.*

*Thesis topic: Government Securities as a Money Substitute (1953).

3. Teaching Experience:

University	Department	Rank	Dates
University of California (Berkeley)	Economics	Teaching Fellow	1949 - 1950
Duke University	Economics	Instructor	1950 - 1953
University of California (Berkeley)	Business Admin.	Assistant Professor	1953 - 1956
Carnegie Inst. of Tech.	Industrial Admin.	Visiting Assistant	1956 - 1957
Harvard	Business Admin.	Associate Professor	1957 - 1962
University of Pennsylvania	Finance	Professor of Finance and Chairman, Graduate Group in Business and Applied Economics	1962 - * 1963 - 1972
University of British Columbia	Finance	Visiting Leslie Wong Memorial Professor	1972

*on leave 1972

4. Military Experience:

   Signal Corps, AUS, 1943 - 1946, Japanese translator (serving in the Pacific area)

5. Other Experience:

Agency	Title	Date
War Department	Financial Analyst	1946 - 1947
California Interim Tax Committee	Research Assistant	1948
S.E.C.	Expert Consultant	1956 - 1957 and 1962 - 1964
Department of Commerce	Expert Consultant	1965
Small Business Administration	Expert Consultant	1966 - 1968
Treasury Department	Expert Consultant	

6. Professional and Honorary Societies:

Phi Beta Kappa
American Finance Association (formerly Associate Editor, Journal of Finance)
American Economic Association
American Accounting Association
Econometric Society
Financial Management Association (Regional Director)

7. Publications:

A. Books and Monographs.

The Role of Regional Security Exchanges (Berkeley: University of California Press, 1957).

The Investment Process: As Characterized by Leading Life Insurance Companies (Boston: Harvard Business School, 1962).

With others, Case Problems in Finance (Homewood: Richard D. Irwin, 1962, 4th ed.).

Dividend Policy and Enterprise Valuation (Belmont: Wadsworth Publising Co., 1967).

The Financial Soundness of Savings and Loan Associations (in Vol. I), a part of the Study of the Savings and Loan Industry. Prepared for The Federal Home Loan Bank Board, 1969.

B. Articles.

"Corporate Planning for Inflation," Financial Management Journal, Vol. 1, No. 3 (Winter, 1972), pp. 36-51.

"The Valuation of Convertible Bonds," Journal of Finance, Vol. XXVIII, No. 3 (June, 1973).

"The Information Content of Stock Prices," Journal of the National Association of Business Economists, Vol. 4, No. 1 (Summer, 1965), pp. 25-8.

"Insurance Companies and the GMC," Journal of Risk and Insurance, Vol. XXXII, No. 1 (March, 1965), pp. 141-5.

"Dividend Policy: Its Influence on the Value of the Enterprise," Journal of Finance, Vol. XVIII, No. 2 (May, 1963), pp. 280-91.

"Organized Securities Exchanges in Canada," Journal of Finance, Vol. XV, No. 3 (September, 1960), pp. 307-25.

"A Discriminant Function for Earnings-Price Ratios of Large Industrial Corporations," Review of Economics and Statistics, Vol. XLV, No. 1 (February, 1959), pp. 44-53.

"Determination of Technical Solvency," Journal of Business of the University of Chicago, Vol. XXX, No. 1 (January, 1957), pp. 30-44.

"Dividend Policies and Common Stock Prices," Journal of Finance, Vol. XI, No. 1 (March, 1956), pp. 29-42.

"Some Implications of Private Pension Funds," Southern Economic Journal, Vol. XXII, No. 2 (October, 1955), pp. 230-43.

"The Use of Borrowed Funds," Journal of Business of the University of Chicago, Vol. XXVIII, No. 2 (April, 1955), pp. 138-48.

"The Treatment of 'Footnote' Liabilities," Accounting Review, Vol. XXX, No. 1 (January, 1955), pp. 95-103.

"The Influence of Tax Revisions on Stock Prices," National Tax Journal, Vol. XII, No. 3 (September, 1954), pp. 252-61.

"Liquidity and Corporate Spending," Journal of Finance, Vol. XIII, No. 4 (December, 1953), pp. 369-88.

"Tax Notes as Liability Offsets," Accounting Review, Vol. XXVIII, No. 4 (October, 1953), pp. 545-50.

"Tax Sensitivity," Southern Economic Journal, Vol. XVII, No. 4 (April, 1951), pp. 422-38.

"Last-in, First-out," Accounting Review, Vol. XXV, No. 1 (January, 1950), pp. 63-76.

Clerk: USCA-2nd

C. A. No. 71-4278
(W. K.; Three-Judge Court)

USCA-2nd Nos.
75-4209 and 76-4103

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 71-4278 (W.K.; Three-Judge Court)

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Plaintiff*,
v.
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, et al.,
Defendants.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 75-4209 & 76-4103

C. ORVIS SOWERWINE, Trustee in Bankruptcy of
REA EXPRESS, INC., a Bankrupt, *Petitioner*,
v.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION, *Respondents.*

On Petition to Review Orders of the
Interstate Commerce Commission

AFFIDAVIT OF SERVICE

I, Josiah Taylor, an agent of the law printing firm of Byron S. Adams Printing, Inc. of Washington, D. C., do hereby certify that on this 16th day of August, 1976, copies of a Joint

2--Affidavit of Service

Appendix in the above-entitled case were served on each of the persons listed on the attached service list by first class mail with proper postage affixed.

In addition, two copies were deposited with the Clerk of the United States District Court for the Southern District of New York by first class mail, with proper postage affixed.

Isaiah Taylor

SUBSCRIBED AND SWORN TO before me this 16th day of August, 1976.

Notary Public, D. C.

(SEAL)

My Commission expires May 14, 1981

S E R V I C E L I S T

Joint Appendix - USCA-2nd Nos. 75-4209 and 76-4103

(August 16, 1976)

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